

II.5 COMMENTS AND RESPONSES: ORGANIZATIONS (O30-O32)

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The master responses provided in Section II.2, *Master Responses, MR-1 through MR-8*, address similar comments received from multiple commenters on the Draft Supplemental EIR and, therefore, many individual responses to comments refer back to the master responses. These Master Responses are:

- MR-1, Scope of the Commission's Discretionary Action
- MR-2, Lease Modification Project Scope
- MR-3, Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR
- MR-4, Piecemealing
- MR-5, Diffuser Entrainment Mortality and Species Affected
- MR-6, Marine Protected Areas
- MR-7, Cumulative Impacts
- MR-8, Alternatives

II.5.30 Comment Set O30: Stanford Environmental Law Clinic

Stanford Law School
Mills Legal Clinic

July 26, 2017

Via Electronic Mail:
CEQA.comments@slc.ca.gov

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Seawater Desalination Project at Huntington Beach: Outfall/Intake Modifications and General Lease — Industrial Use (PRC 1980.1) Amendment (Lease Modification Project)

Dear Ms. Borack:

Thank you for the opportunity to comment on the Draft Supplemental Environmental Impact Report (“DSEIR”) for Poseidon’s proposed seawater desalination project at the existing Huntington Beach Generating Station (“Project”). Please accept these comments as a supplement to the longer comment letter submitted by California Coastkeeper Alliance, Orange County Coastkeeper, Residents for Responsible Desalination, and California Coastal Protection Network.

Before the formal California Environmental Quality Act (“CEQA”) update process for this Project commenced, we expressed concerns, by way of letter dated October 6, 2016, about the truncated nature and scope of the State Lands Commission’s (“Commission”) proposed environmental review. Unfortunately, these concerns have not been addressed in the DSEIR. Accordingly, we attach our October 2016 correspondence and incorporate it by reference herein to ensure that it is fully part of the administrative record as the Commission evaluates whether to approve amendments to the Project lease. The comments below will not duplicate our earlier legal analysis, but rather highlight and reiterate our serious concerns about the legal infirmity of the DSEIR.

First, in proposing to approve a discretionary lease modification nearly seven years after the Project was approved (but never commenced), the Commission, as a matter of law, necessarily assumes CEQA “lead agency” status for the Project, whether or not it wants to do so. As the original lead agency for the Project, the City of Huntington Beach was charged with preparing and certifying an adequate EIR. At that time, the Commission acted in the limited role of a “responsible agency,” based on the City-certified 2010 EIR, when it made the ancillary decision in October 2010 to execute the requisite trust lands lease. But because the City no longer has jurisdiction or discretionary authority over the Project, any agency that proposes to undertake a new discretionary decision for the same Project steps into the shoes of the original lead agency when, as is clearly the case here, the Project or its circumstances are so changed as to require a subsequent EIR. 14 Cal. Code Regs. § 15052(a). The Commission’s proposed lease modification is such a discretionary decision and thus triggers substitute lead agency obligations.

Community Law ♦ Criminal Defense ♦ Environmental Law ♦ Immigrants’ Rights ♦ International Human Rights and Conflict Resolution ♦ Intellectual Property and Innovation ♦ Organizations and Transactions ♦ Religious Liberty ♦ Supreme Court Litigation ♦ Youth and Education Law Project

O30-1

O30-2

COMMENT SET O30: STANFORD ENVIRONMENTAL LAW CLINIC (cont.)

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Under CEQA, there simply is no question that a subsequent EIR is required in this case. The Project has changed significantly since its approval in 2010, as have the circumstances surrounding it. In response to new state law requirements under the Water Code and the California Ocean Plan, the Project proponent has proposed substantial revisions to the Project itself, beyond those changes that necessitate a lease amendment. For instance, the Project proponent now proposes a potable water delivery method that is entirely different from anything considered in the 2010 EIR. Because new delivery options under consideration by the Project proponent and the Orange County Water District would involve significant impacts that were never considered in the original CEQA analysis, this fact alone necessitates a subsequent EIR. 14 Cal. Code Regs. § 15162.

O30-3

Likewise, intervening events over the last seven years since the CEQA review was completed and the Project approved have dramatically altered the circumstances surrounding the Project and resulted in highly-relevant new information not previously considered by any agency. For instance, local water supply projects and conservation efforts have led to new, substantially reduced water demand forecasting in Orange County. This new information raises serious threshold questions about the need for the Project – or at the very least, for a regional desalination facility of this size. Recent amendments to the California Ocean Plan regarding desalination facilities also expressly require an evaluation of project need. The scope of need, in turn, affects the range of reasonable alternatives that must be considered under CEQA. The range of reasonable alternatives considered is especially relevant and important here because the proposed Project could adversely impact the integrity of California's new network of marine protected areas, which became effective in 2012, after completion of the 2010 SEIR. As the first agency to review the proposed Project and make a new discretionary decision in the shadow of these significant changes, the Commission must fully evaluate the implications and impacts of this new information in its CEQA document, even if other agencies like the Coastal Commission or Regional Water Quality Control Board also have jurisdiction over the Project. See *Banning Ranch Conservancy v. City of Newport Beach*, 2 Cal. 5th 918 (2017).

O30-4

Second and related, the DSEIR, as currently structured, improperly segments the impacts analysis, in an apparent attempt to avoid evaluating potentially significant changes and new information not previously considered. The Project at issue here is the proposed regional desalination facility, which would (1) extract seawater along with the living public trust marine resources contained in that seawater, (2) process the seawater into potable fresh water and deliver it through a water distribution system, and (3) discharge brine wastes to the ocean. The Commission's lease allows certain activities and the placement of certain equipment on public trust lands for the sole purpose of facilitating the development and operation of this single, integrated desalination facility. Because there is no other purpose or independent utility for the lease – or the lease modification now under consideration – the Commission must, as a matter of law, evaluate the proposed lease modification (as it did the original lease in 2010) as part of the whole Project, not a separate, different, or smaller project.

O30-5

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This is not a case where the Commission's action is a first modest step in a sequence of speculative actions leading to a potential future project. The desalination facility has correctly been defined as a single CEQA "project" for years, in a single EIR, and the activities that will take place on trust lands under the Commission's jurisdiction are an integral part of that Project. The Commission's new attempt to slice off the lease modification from the rest of the Project and consider only that slice, in order to avoid considering the broader impacts of significant Project changes and new information, is the kind of quintessential "piecemealing" or "segmentation" that the courts have long forbidden. See *Bozung v. Local Agency Formation Com.*, 13 Cal. 3d 263, 283-84 (1975) (explaining CEQA's mandate that "environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences"); *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 396 (1989) (holding that EIR must cover all reasonably foreseeable impacts from completion of the project, even if the precise details of that completion have not yet been formally decided). If Commission staff believes that a portion of the Project – e.g., the water delivery system – is too speculative or indeterminate to evaluate at this time, the proper remedy is to wait for additional details from the Project proponent, not to illegally segment the impacts analysis and approve a piece of the Project.

O30-5
cont.

The Commission's misinterpretation of its CEQA obligations in this matter will have profound implications. Under the Commission's approach, each subsequent agency would prepare its own separate partial CEQA update for the Project, meaning that the public will be faced with several different, and potentially incompatible, updated EIRs. This is precisely what the Legislature intended to avoid by requiring that a single lead agency undertake environmental review and that other agencies making subsequent decisions utilize the lead agency's analysis in their processes. This fundamental concept of a single CEQA document applies with equal force to subsequent environmental review performed by a substitute lead agency when a project or its circumstances have changed or when new information of substantial importance comes to light. Having several different agencies draft updated partial EIRs for a single, integrated project deprives the public of an ability to comprehensively understand project impacts and reasonable alternatives or mitigation. It is for this reason that segmenting subsequent CEQA review is not only unlawful, but poor public policy.

O30-6

Indeed, as the DSEIR itself acknowledges, other agencies undertaking updated CEQA review for the changed Project – including at least the California Coastal Commission, the Regional Water Quality Control Board, and the Orange County Water District – will and by law must rely upon the Commission's DSEIR. Thus, the Commission's erroneous legal determinations about the limited scope of the updated environmental review will serve as the CEQA baseline for all other agencies. If concerned citizens do not challenge this incorrect baseline document now, they may be precluded from doing so when other agencies engage in ancillary CEQA proceedings. For this reason, unless the Commission prepares and recirculates a more robust and thorough subsequent EIR that considers the Project as a whole and the impacts of Project changes,

COMMENT SET O30: STANFORD ENVIRONMENTAL LAW CLINIC (cont.)

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changed circumstances, and new information, concerned citizens like our clients will have no choice but to seek immediate judicial review of the Commission's CEQA compliance.

We appreciate your further attention to this important matter.

Sincerely yours,



Deborah A. Sivas

O30-6
cont.

COMMENT SET O30: STANFORD ENVIRONMENTAL LAW CLINIC (cont.)



October 6, 2016

Via U.S. and Electronic Mail

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**Application for Amendment to Lease No. PRC 1980.1
from Poseidon Resources (Surfside) LLC**

Dear Ms. Lucchesi:

We write on behalf of California Coastkeeper Alliance, Residents for Responsible Desalination, and California Coastal Protection Network in connection with the State Lands Commission ("SLC") process for evaluating Poseidon Surfside's application to amend tidelands Lease No. PRC 1980.1 in order to accommodate its proposed Huntington Beach Desalination Project ("Project"). Since 2010, when the City of Huntington Beach approved permits for the facility, Poseidon has significantly altered key facets of the Project. These changes necessitate additional environmental review under the California Environmental Quality Act ("CEQA"). SLC cannot lawfully proceed with consideration of the requested lease amendment until that additional review is completed. Because there are no further discretionary approvals of the Project by the City, we understand that SLC will be stepping into the role of "lead agency" for the requisite additional CEQA review and preparing an updated Environmental Impact Report ("EIR") for public review and certification. In that role, we urge SLC to fully evaluate all potential impacts associated with proposed changes to the Project.

More specifically, and as discussed below, a substitute lead agency must evaluate all impacts from the Project as a whole in any supplemental or subsequent EIR. That is, the task of additional environmental review cannot be segmented between different agencies; the new lead agency, like the prior one, must prepare and circulate a single updated EIR that can then be relied upon by other responsible agencies taking subsequent discretionary actions. There is no legal authority that would allow SLC to slice off a piece of the Project for additional CEQA review while ignoring other substantial changes to the Project or deferring consideration of those changes to another agency. Accordingly, we urge SLC to follow this simple CEQA principle in moving forward on Poseidon's requested lease amendment.

History of Project

In 2005, the City of Huntington Beach, acting as the designated CEQA "lead agency" for the Project, certified an EIR that evaluated the proposed desalination plant as a

O30-7

COMMENT SET O30: STANFORD ENVIRONMENTAL LAW CLINIC (cont.)

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cont.

“co-located” facility at the existing power plant. In 2010, the City certified a Subsequent Environmental Impact Report (“SEIR”) for a “stand-alone” project that would continue drawing cooling water through the power plant’s open ocean intake system after the power plant stopped using this system. Since then, Poseidon has proposed substantial changes to the Project that were not evaluated in the EIR or SEIR. In particular, Poseidon now proposes to:

- (1) continue using the existing intake structure for “temporary stand alone” use despite new scientific information and changes in the law;
- (2) change substantially the offshore seawater intake by dismantling the existing velocity cap to add one millimeter wedgewire screens and associated structures, once the power plant discontinues withdrawing seawater;
- (3) change substantially the existing seawater discharge pipe with a concentrated seawater diffuser; and
- (4) change substantially the pipeline to carry desalinated water away from the site for injection into the groundwater aquifer and/or other means of delivering the product water to member agencies of the Orange County Water District.

None of these significant changes have been evaluated in any existing EIR or SEIR. Further, since certification of the 2010 SEIR, there are significant changes in the surrounding area that will contribute to cumulative impacts from the Project, including, but not limited to, cumulative air quality impacts already identified by SLC.

Although the City has no further discretionary approvals to grant for the Project, several other agencies do. In addition to the tidelands lease amendment from SLC, Poseidon also is seeking a coastal development permit from the Coastal Commission and a National Pollutant Discharge Elimination System (“NPDES”) permit and Waste Discharge Requirements from the Regional Water Quality Control Board, among other approvals. Each of these agencies will, and as a matter of law must, rely on the additional CEQA review that SLC completes to address the proposed changes to the Project.

Legal Responsibilities

Since more than one public agency may have discretionary approval authority for a project, CEQA includes rules for determining each agency’s obligations. The agency with “principal responsibility” for carrying out or approving a project serves as the CEQA “lead agency” for purposes of complying with the statutory requirements. Cal. Pub. Res. Code § 21067. CEQA requires the lead agency must conduct a thorough review of the project in question, even though additional review might later be undertaken by other agencies with jurisdiction over specific resources, and must provide a comprehensive analysis on which other agencies may rely. Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc. Com., 10 Cal. App. 4th 908, 921 (1992).

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cont.

By contrast, a CEQA “responsible agency” is “a public agency, other than the lead agency, which has responsibility for carrying out or approving a project,” *id.* § 21069, and a CEQA “trustee agency” is a state agency that has jurisdiction by law over natural resources affected by a project that are held in trust for the people of the State of California. *Id.* § 21070. A responsible agency generally consults with the lead agency about the CEQA process, provides comments on the draft EIR, and complies with CEQA by considering the final EIR certified by the lead agency and by reaching its own conclusion on whether and how to approve the project. 14 C.C.R. § 15096(a)-(b). Normally, the local land use authority functions as the lead agency, while specialized state agencies (e.g., State Lands Commission, Regional Water Quality Control Board, Caltrans, etc.) act as responsible or trustee agencies.

Once a lead agency is selected, that agency shoulders the burden of complying with CEQA in all respects. In particular, “the lead agency is responsible for considering the effects of all activities involved in a project and, if required by CEQA, preparing the draft and final EIR’s and certifying the final EIR for a project.” *Riverwatch v. Olivenhain Mun. Water Dist.*, 170 Cal. App. 4th 1186, 1201 (2009) (emphasis added). In contrast, “[r]esponsible agencies generally rely on the information in the CEQA document prepared by the lead agency [e.g., an EIR] and ordinarily are not allowed to prepare a separate EIR or negative declaration.” *Id.* In other words, “while the lead agency is responsible for considering all environmental impacts of the project before approving it, a responsible agency has a more specific charge: to consider only those aspects of a project that are subject to the responsible agency’s jurisdiction.” *Id.* 1201, 1206 (emphasis added).

Here, the City of Huntington Beach initially assumed lead agency status for the Project, preparing and certifying both the original EIR and the SEIR in connection with its issuance of a coastal development permit and a conditional use permit. For the reasons discussed above, substantial changes to the Project not evaluated in those prior documents necessitate additional CEQA review. It does not appear, however, that there are any additional discretionary approvals pending before the City. Under such circumstances, the CEQA Guidelines provide as follows:

Where a responsible agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate lead agency, the responsible agency shall assume the role of the lead agency when any of the following conditions occur:

...

(2) The lead agency prepared environmental documents for the project, but the following conditions occur:

- (A) A subsequent EIR is required pursuant to Section 15162,
- (B) The lead agency has granted a final approval for the project, and
- (C) The statute of limitations for challenging the lead agency's action under CEQA has expired.

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cont.

14 C.C.R. § 15052(a). The assumption of the lead agency role falls to the next agency to issue a discretionary approval, which in this case appears to be SLC.¹

Given the substantial changes in the proposed Project since the SEIR was certified, there simply is no question that a subsequent EIR must be prepared to inform the SLC's discretionary decision on any lease amendment. All EIRs, including subsequent EIRs, must evaluate the "whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." 14 C.C.R. § 15378. "From this principle, 'it is clear that the requirements of CEQA 'cannot be avoided by chopping up proposed projects into bite-sized pieces' which, when taken individually, may have no significant adverse effect on the environment." Ass'n for a Cleaner Env't v. Yosemite Cmty. Coll. Dist., 116 Cal. App. 4th 629, 638 (2004) (project to close shooting range included cleanup and dismantling); see also Christward Ministry v. Superior Court, 184 Cal. App. 3d 180, 195–96 (1986) (city impermissible chopped up single project into three separate projects, which was "exactly the type of piecemeal environmental review prohibited by CEQA"); Citizens Ass'n for Sensible Dev. of Bishop Area v. County of Inyo, 172 Cal. App. 3d 151, 165 (1985) (project improperly segmented into two projects for CEQA purposes).

To comply with CEQA, therefore, SLC must prepare a subsequent EIR for the whole project that covers impacts from all substantial changes to the Project, including changes to aspects of the Project that do not involve the tidelands lease, because all other responsible agencies must rely on the subsequent CEQA document for any additional discretionary approvals. In particular, as noted above, we understand that the substantial changes to the Project include a pipeline to carry desalinated water away from the site for injection into the groundwater aquifer. Because these new aspects – the pipeline and the groundwater injection – are necessary steps in Poseidon's objective to produce and sell desalinated water, they unquestionably are part of the same project for CEQA purposes. Tuolumne Cty. Citizens for Responsible Growth, Inc. v. City of Sonora, 155 Cal. App. 4th 1214, 1226 (2007) ("The relationship between the particular act and the remainder of the project is sufficiently close [to constitute a single project under CEQA] when the proposed physical act is among the "various steps which taken together obtain an objective."). As such, SLC must evaluate them in its updated EIR. Rural Landowners Assn. v. City Council, 143 Cal. App. 3d 1013, 1025 (1983) (where responsible agency stepped into the shoes to prepare a subsequent or supplemental EIR, all parts of project, including new parts, had to be evaluated).

¹ Although there has been some suggestion that the Orange County Water District should assume lead agency status, that course of action makes no sense. The Water District will presumably be the last agency to take a discretionary action – purchase of the water from the Project – after Poseidon obtains all necessary government approvals and permits. Thus, one of the state permitting agencies

COMMENT SET O30: STANFORD ENVIRONMENTAL LAW CLINIC (cont.)

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O30-7
cont.

In carrying out its updated environmental review, therefore, SLC must evaluate any and all aspects of the revised Project that were not previously considered in the EIR or SEIR, including substantial new cumulative impacts in the vicinity of the Project. CEQA requires environmental review of indirect and cumulative impacts, as well as direct impacts. Indirect impacts are “secondary effects” that are the reasonably foreseeable result of a project even though they “are later in time or farther removed in distance.” 14 C.C.R. § 15358(a)(2); Bakersfield Citizens for Local Control v. City of Bakersfield, 124 Cal. App. 4th 1184, 1205 (2004). A cumulative impact “is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” 14 C.C.R. § 15130. “One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources.” Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d 692 (1990). Thus, without “meaningful cumulative analysis” and control, “piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment.” San Franciscans for Reasonable Growth v. City and County of San Francisco, 151 Cal. App. 3d 61 (1984).

In short, the law is clear that when SLC steps into the City of Huntington Beach’s shoes, it must play the full role of a lead agency and consider all reasonably foreseeable direct, indirect and cumulative impacts from the Project, including from those aspects of the Project that may fall under the approval jurisdiction of another responsible agency. This result makes sense from a policy perspective, as well. Just as CEQA requires a single initial lead agency for each project and a single EIR upon which all other responsible agencies may rely, the same rules apply to a subsequent or supplemental EIR. The agency that steps into the lead agency shoes must prepare a single document that evaluates impacts from the whole project. Deferring evaluation of some project impacts simply because another responsible agency has later approval authority would deprive the public and decisionmakers of the ability to comprehensively understand the project’s full environmental impacts, in violation of CEQA. A decision to proceed on the lease amendment application with only a partially updated EIR would render SLC’s actions vulnerable to a viable legal challenge.

CONCLUSION

For the reasons discussed above, we strongly encourage SLC to take full responsibility for preparation, circulation, and certification of the required subsequent EIR for this Project. A partial, segmented SEIR simply cannot withstand judicial scrutiny. Moreover, SLC cannot lawfully move forward with approving a lease amendment until all necessary CEQA is completed; the law simply does not allow approval of the lease amendment contingent on some later environmental analysis by a different agency. There is thus no practical benefit – to any agency or party – from preparing a partial SEIR.

COMMENT SET O30: STANFORD ENVIRONMENTAL LAW CLINIC (cont.)

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O30-7
cont.

Thank you for your attention to this important matter. We and our clients look forward to reviewing a draft SEIR that covers all proposed changes in the Project and to fully participating in the CEQA public process.

Sincerely yours,



Deborah A. Sivas

RESPONSE TO COMMENT SET O30: STANFORD ENVIRONMENTAL LAW CLINIC

- O30-1 The commenter's request that the commenter's comments supplement the comment letter submitted by California Coastkeeper Alliance, Orange County Coastkeeper, Residents for Responsible Desalination, and California Coastal Protection Network and the commenter's notification that the commenter's October 2016 NOP correspondence is incorporated by reference will be provided to the Commission for consideration in its decision-making process. The Project that will be considered by the Commission is the proposed Lease Modification Project, as defined in Section 2 of this Supplemental EIR. (See also master responses MR-1, *Scope of the Commission's Discretionary Action*, and MR-2, *Lease Modification Project Scope*.)
- O30-2 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O30-3 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O30-4 See master response MR-8, *Alternatives*.
- O30-5 See master response MR-4, *Piecemealing*.
- O30-6 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.

COMMENT SET O30: STANFORD ENVIRONMENTAL LAW CLINIC (cont.)

- O30-7 The commenter's resubmission of the commenter's October 2016 NOP comments will be provided to the Commission for consideration in its decision-making process.

II.5.31 Comment Set O31: Surfrider Foundation



July 27, 2017

Alexandra Borack, Project Manager
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100 Howe Avenue, Suite 100-South
Sacramento, CA 95825

Sent via electronic mail to: CEQA.comments@slc.ca.gov

Re: Poseidon Supplemental EIR Comments.

Dear Ms. Borack,

The Surfrider Foundation on behalf of our Huntington Beach Chapter hereby respectfully submits these comments on the State Lands Commission's "Draft Supplemental Environmental Impact Report for the Seawater Desalination Project At Huntington Beach: Outfall/Intake Modifications & General Lease – Industrial Use (PRC 1980.1) Amendment (Lease Modification Project)." The Surfrider Foundation is a non-profit 501(c)(3) organization that is dedicated to the protection and enjoyment of our ocean, waves, and beaches through a powerful activist network.

O31-1

The Surfrider Foundation is disappointed that the State Lands Commission's Draft Supplemental EIR ("SEIR") does not include or address the critical issues raised in our oral and written scoping comments with respect to the proposed Poseidon desalination plant. The SEIR falls short of many key requirements of the California Environmental Quality Act ("CEQA"), California Public Resources Code Section 21000 *et seq.*, and the CEQA Guidelines, California Code of Regulations, title 14, Section 15000 *et seq.* The State Lands Commission must resolve the SEIR's multiple deficiencies before they may legally grant the requested lease modification approval, and before the California Coastal Commission or Regional Water Quality Control Board may issue any required approvals for the Project. Surfrider therefore respectfully urges the Commission to remedy the following defects in the SEIR's analysis.

1. The State Lands Commission is Required to Prepare a *Subsequent* EIR for the Entire Proposed Desalination Project, Analyzing all Changes and Impacts of the Entire Project.

O31-2

As the Surfrider Foundation previously asserted during the scoping period, the State Lands Commission is required to prepare a Subsequent EIR. Pursuant to the CEQA Guidelines, a Subsequent EIR is required where there are (1) proposed changes to a project, (2) changes

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

to circumstances under which it will be undertaken, or (3) new information, such that new significant environmental effects or a substantial increase in the severity of previously identified significant effects will result. (14 Cal. Code Regs. § 15162.) As raised in our scoping comments, there are significant changes to the Project, changes to existing circumstances, and new information that will result in new or more severe impacts, triggering the requirement for a Subsequent EIR.

O31-2
cont.

This includes but is not limited to the proposed changes to the seawater intake system, discharge pipe, and product water distribution component; changes to relevant law including the new Ocean Plan Desalination Amendment; and new information regarding the purpose and need for the project and its product water, and new information regarding adverse impacts from the similar Carlsbad facility.

These changes are described in more detail below and will result in significant impacts to marine resources and the community due to construction and operation, as well as impacts to groundwater and water resources, which have not previously been analyzed.

Accordingly, a Subsequent EIR must be prepared, and it must be prepared by the public agency that grants the next discretionary approval for the project. (CEQA Guidelines, § 15162(c).) No other responsible agency can grant an approval for the project until the subsequent EIR is certified. (*Id.*) Accordingly, as the first agency to grant a discretionary approval according to the Interagency Permit Sequencing Agreement, the State Lands Commission is required to prepare the Subsequent EIR. The Regional Water Board and Coastal Commission cannot grant any approvals for the project until the Subsequent EIR has been certified.

Furthermore, the regulations require that the State Lands Commission assume the role of lead agency for purposes of preparing the subsequent EIR. (14 Cal. Code Regs. § 15052.) A subsequent EIR is required; the prior lead agency, the City of Huntington Beach, has granted a final approval for the project; and the statute of limitations for challenging Huntington Beach's action has expired. (*Id.*) The State Lands Commission's assertion that it is merely acting as a responsible agency is flawed and legally inaccurate.

O31-3

Therefore, Surfrider Foundation asks that the State Lands Commission adequately address all proposed changes, changed circumstances, and new information relevant to the *entire* proposed desalination Project, in a Subsequent EIR.

O31-4

2. The State Lands Commission Cannot Define the Project too Narrowly, and Engage in Illegal Piecemealing under CEQA.

O31-5

The Draft SEIR defines the project too narrowly. The project is not a lease amendment, but the entire desalination Project, and environmental review must accordingly look at the *whole* project. The CEQA Guidelines define a "project" to mean "the whole of an action." (CEQA Guidelines, § 15378, (a).) It is illegal for an agency to divide a project into separate parts to avoid holistic CEQA review. (*California Farm Bureau Federation v. California Wildlife Conservation Bd.*, 143 Cal.App.4th 173 (2006).)

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

Courts have considered separate activities as one CEQA project and required them to be reviewed together where, for example, the second activity is a reasonably foreseeable consequence of the first activity (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263 [118 Cal. Rptr. 249, 529 P.2d 1017]); or both activities are integral parts of the same project (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal. App. 3d 223 [242 Cal. Rptr. 37])(*Sierra Club v. Westside Irrigation District et al.* (2005) 128 Cal. App. 4th 690).

O31-5
cont.

As raised during scoping comments, changes to the product water distribution system component are but one critical issue that must be addressed in this document. The distribution system for the desalinated product water is more than a reasonably foreseeable consequence – it is *the* critical component in order to deliver the product of the desalination Project – and thus is plainly an integral part of the Project.

In 2010, Poseidon planned to build the necessary infrastructure, and put the product water in new and existing pipes to deliver to customers. Now, Poseidon and the Orange County Water District plan for the District to build the delivery infrastructure and put at least some of the water into the groundwater system.¹ This raises a multitude of concerns regarding significant impacts to the community, from construction impacts to concerns for the community's groundwater and water resources. All potential changes to the Project's delivery system must be analyzed in a Subsequent EIR together with all other aspects of the project.

The document cannot disregard this obligation, as it does in section 3.2.4, claiming that the Orange County Water District has placed the environmental review on hold. The distribution component is not "speculative at this time," as the document claims. Without means for distribution, there is no project. Therefore, the CEQA reviews cannot be segmented.

3. The State Lands Commission Must Consider Cumulative Impacts of the Project, Including Potential Greenhouse Gas Emissions Impacts

O31-6

Furthermore, this document cannot narrowly define the project and skirt the requirement for analyzing cumulative impacts, including but not limited to cumulative impacts from the distribution component and greenhouse gas emissions.

Under CEQA, an EIR must consider all significant effects on the environment from the project, including any irreversible effects; any cumulative effects from the project; and any feasible mitigation measures to mitigate or avoid those effects. (Cal. Pub. Res. Code § 21100; 14 Cal. Code Regs. § 15130.) As the regulations provide, "[t]he following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

¹ See

<https://www.ocwd.com/media/2462/01b0revisedposeidontermsheetcleanversion 20150>

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

(A) A list of past, present, and probable future projects producing related or cumulative impacts, *including, if necessary, those projects outside the control of the agency*, or
(B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency.” (*emphasis added*)

O31-6
cont.

Additionally, pursuant to CEQA, lead agencies must analyze the greenhouse gas emissions of proposed projects and reach a conclusion regarding the significance of those emissions. (CEQA Guidelines, § 15064.4.) When a project’s greenhouse gas emissions may be significant, lead agencies must consider a *range of potential mitigation measures to reduce those emissions*. (CEQA Guidelines, § 15126.4.) Related to greenhouse gas emissions, CEQA mandates analysis of a proposed project’s potential energy use, sources of energy supply, and ways to reduce demand, which all have implications on the Project’s overall greenhouse gas emissions. (CEQA Guidelines, Appendix F.)

While there is some discussion of greenhouse gas emissions in the SEIR, and reference to applicable state laws and agency thresholds, the SEIR’s discussion of Project impacts is limited to greenhouse gas emissions associated with the construction, installation, and maintenance of wedgewire screens to the intake, and an outfall multiport diffuser. However, there is no discussion about greenhouse gas emissions related to construction or operation of the distribution system component; neither is there a discussion of any cumulative impacts analysis of this desalination Project, or other projects in the region, or other energy-intensive potential desalination projects in the state.

Moreover, there are concerns with the framework of the SEIR’s greenhouse gas analysis. In the 2010 SEIR, Huntington Beach simultaneously considered the greenhouse gas emissions of the project and the “design features” – such as greenhouse gas offsets and credits, and on-site solar power generation – in determining whether the project’s greenhouse gas emissions constitute a significant impact requiring mitigation. (*See*, SEIR (May 2010), p. 4.12-31, “With incorporation of these project design features, the Project would have a net zero increase in GHG emissions. Therefore, the Project would have emissions below SCAQMDs 10,000 MTCO₂E/yr threshold, and the Project impacts would be less than significant.”)

O31-7

However, CEQA requires that an EIR separately identify and analyze the significance of impacts *before proposing mitigation measures*. (*Lotus et al. v. Dept. of Transportation et al.*, 223 Cal.App. 4th 645 (2014).) In *Lotus v. DOT*, the court of appeal recognized that Caltrans had incorporated proposed mitigation measures into its description of the project and then concluded that any potential impacts from the project would be less than significant. (*Id.*, at 655.) But “[s]imply stating that there will be no significant impacts because the project

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

incorporates “special construction techniques” is not adequate or permissible.” (*Id.*, at 657.) As the court acknowledged, “[t]he failure of the EIR to separately identify and analyze the significance of the impacts to the root zones of old growth redwood trees before proposing mitigation measures is not merely a harmless procedural failing. ... this shortcutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decision making and informed public participating. It precludes both identification of potential environmental consequences arising from the project and also *thoughtful analysis of the sufficiency of measures to mitigate those consequences.*” (*Id.*, at 658 (emphasis added).)

O31-7
cont.

This is particularly important, as CEQA clearly requires that for each significant effect, the EIR must identify specific mitigation measures; and *where several potential mitigation measures are available, each should be discussed separately, and the reasons for choosing one over the other should be stated.* (*Lotus v. DOT*, citing *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027.)

Here, as with the 2010 SEIR, the SEIR simultaneously considers the greenhouse gas emissions generated by the Project as well as mitigation proposed by Poseidon in making its significance determination. This approach precludes considering all potential mitigation measures, as required by CEQA.

Additionally, it should be noted that the 2010 finding of no significance took into account mitigation measures such as greenhouse gas reductions due to high-efficiency design, green building design, on-site solar power generation, CO₂ recovery, and reduced water importation, with remaining emissions mitigated via offsets and/or renewable energy credits. Poseidon had previously proposed similar offsets via reduced water importation from the State Water Project for its Carlsbad plant. However, a 2005 agreement between the California Department of Water Resources and the Metropolitan Water District (“MWD”) prohibited desalination projects from reducing MWD’s State Water Project entitlements. In addition, MWD’s 2009 contractual agreement with the San Diego member agencies who agreed to buy Poseidon’s water guaranteed that the desalinated water could not interfere with MWD’s ability to import or use its full State Water Project entitlements. Therefore, there was no “one-for-one” reduction in State Water Project imports.²

O31-8

Meanwhile, four years later, the SEIR relies on Poseidon’s new Energy Minimization and Greenhouse Gas Reduction Plan (February 27, 2017). While the current plan does not appear to include a proposed reduction for import reductions, what happened in Carlsbad illustrates why this EIR must not rely upon or incorporate mitigation measures into the significance determination, in lieu of a full independent analysis of potential mitigation measures. Further, as with the prior SEIR, the current SEIR analysis similarly assumes that certain measures, such as offsets and/or renewable energy credit purchases, energy efficiency measures, and on-site use of renewable resources, will be undertaken, without any independent analysis of these potential mitigation measures. Yet the Energy Minimization and Greenhouse Gas Reduction Plan says merely that “energy efficiency

² See <https://documents.coastal.ca.gov/reports/2010/2/W6a-2-2010.pdf>.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

measures and on-site use of renewable resources will be given the highest priority.” (Plan, p. 5.) Building design will follow the principles of Leadership in Energy and Environmental Design (LEED) program only “to the extent reasonably practicable;” and Poseidon will install rooftop solar panels only “if it is reasonably expected to provide a return on the capital investment over the life of the project.” (p. 10 – 11.)

O31-8
cont.

Moreover, the Plan provides contingencies to the offset acquisition and verification “commitment.” (Plan, Section III(C),(E), & (F).) This includes contingencies for where sufficient offsets may not be available from specific providers at a “price that is reasonably equivalent to the price for offsets in the broader domestic market;” where offsets are not reasonably available (including where the market price has escalated to a level that renders the purchase of offsets/RECs economically infeasible to the Project, or where the market for offsets/RECs is suffering from significant market disruptions). In summary, Poseidon’s Energy Minimization and Greenhouse Gas Reduction Plan does not commit to a concrete suite of actions, and yet the analysis in the SEIR summarily assumes, “... Poseidon commits, pursuant to the following Applicant Proposed Measure (APM), to offset all direct and indirect construction and post-construction (operational) GHG emissions. APM-7. An Energy Minimization and Greenhouse Gas Reduction Plan, most recently updated February 27, 2017, shall be implemented to offset the total direct and indirect GHG emissions from construction and operations of the HB Desalination Plan. Upon implementation of APM-7, the GHG Plan would provide sufficient GHG offsets or RECs to “bring to zero the total amount of direct and indirect GHG emissions” from the overall HB Desalination Plant including the new modifications. With this design feature in place, the project-related GHG emissions would be less than significant.”

In *Lotus v. DOT*, described above, the court noted that the insufficient EIR at issue “contains numerous mitigation measures that are not enforceable and are therefore not compliant with CEQA.” (*Id.*, at 657.) Moreover, the intertwining of the impacts and mitigation analysis, instead of having a separate impacts analysis and *then* analyzing mitigation, precludes adequate analysis. As the *Lotus* court recognized, “Absent a determination regarding the significance of the impacts ..., it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered.”

In short, the greenhouse gas emissions analysis is inadequate in this SEIR. The SEIR cannot rely upon loose “commitments” proposed by Poseidon, in making a determination of significance. The Commission must separately analyze the emissions generated by the Project, including a full analysis of cumulative impacts associated with the distribution component, and other projects including other desalination projects proposed in California. Then only after it has assessed the full, and enormous magnitude of greenhouse gases to be generated by the Project, it must separately discuss all potential mitigation measures. And any mitigation measures adopted must be additional and enforceable. There must be “thoughtful analysis of the sufficiency of measures to mitigate [the Project’s] consequences.” (*Id.*, at 658.)

O31-9

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

Additionally, an EIR generally may not defer evaluation of mitigation until a later date, and CEQA only allows a lead agency to defer mitigation when three narrow, specific prerequisites are met: (1) the EIR contains criteria or performance standards to govern future actions implementing the mitigation; (2) practical considerations preclude development of the measures at the time of the initial project approval; and (3) the agency has assurances that the future mitigation will be both “feasible and efficacious.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94-95; *San Joaquin Raptor Rescue Center v. County of Merced* (2010) 149 Cal.App.4th 645, 669-71; CEQA Guidelines, § 15126.4(a)(1)(B).) To the extent that some of the measures identified in the SEIR and Energy Minimization and Greenhouse Gas Reduction Plan may not be feasible and efficacious, the SEIR cannot rely on them and fail to conduct a full independent analysis of mitigation measures.

O31-10

The following measures should be independently considered in the SEIR:

O31-11

- Incorporate U.S. Green Building Council’s LEED or comparable standards for energy and resource efficient building during pre-design, design, construction, operations and management.
- Design buildings for passive heating and cooling, and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.
- Design buildings for maximum energy efficiency including maximum possible insulation.
- Reduce the use of pavement and impermeable surfaces.
- Require water reuse systems.
- Maximize water conservation measures in buildings and landscaping using drought tolerant plants in lieu of turf, and planting shade trees.
- Install the maximum amount of solar panels available onsite, including solar canopies over parking areas.
- Install solar water heating systems to generate all of the Project’s hot water requirements.
- Install electric vehicle and plug-in hybrid vehicle charging stations to reduce emissions from vehicle trips.
- Install energy storage systems to ensure that the energy generated can be used on-site.
- Require recycled, low-carbon, and otherwise climate friendly building materials such as salvaged and recycled content materials for building, hard surfaces, and non-plant landscaping materials.

Similarly, provisions for monitoring to ensure compliance with any selected mitigation measures and emissions reductions must be included in the SEIR. (CEQA Guidelines, § 15126.4.)

O31-12

Finally, Surfrider takes issue with the fact that Poseidon’s Energy Minimization and Greenhouse Gas Reduction Plan repeatedly says that Poseidon has “voluntarily” committed

O31-13

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

to offset the indirect greenhouse gas emissions associated with the Project's operations. However, as explained above, greenhouse gas reduction is not voluntary - the project's enormous greenhouse gas emissions constitute a significant adverse impact to our environment which *must* be mitigated under CEQA. Any claim that this is voluntary is disingenuous, and inaccurate.

O31-13
cont.

4. The State Lands Commission Cannot Disregard Subsurface Intakes or Comingling Brine Waste in its Alternatives Analysis.

O31-14

As Surfrider raised during oral comments, the draft SEIR fails to adequately evaluate the Project for consistency with the Ocean Plan Desalination Amendment. The adoption of the Ocean Plan amendment is the reason for Poseidon requesting the lease modification but the SEIR falls short of the analysis required in the amendment. The SEIR does not consider the feasibility of subsurface intakes or comingling the brine.

The State Lands Commission Cannot Disregard Subsurface Intakes in its Alternatives Analysis. Pursuant to the Ocean Plan Desalination Amendment, the Regional Water Board shall conduct a Water Code Section 13142.5(b) analysis of the Project, which includes separately as independent considerations a range of feasible alternatives for the best site, technology, design, and mitigation measures to minimize the intake and mortality of all forms of marine life. (§ M(2)(a)(2).) With respect to site, an applicant is required to evaluate a reasonable range of sites, including sites that would likely support subsurface intakes. (§ M(2)(b).) Critically, with respect to technology, the Desalination Amendment articulates a clear preference for subsurface intakes. The Regional Water Board, in consultation with the state board staff, shall require subsurface intakes unless *it* determines based on a variety of factors, that subsurface intakes are infeasible. (§ M(2)(d).)

Finally, with respect to design, *only if the regional board determines that subsurface intakes are infeasible* and surface water intakes are proposed instead, there must be analysis of potential designs for those intakes to minimize the intake and mortality of all forms of marine life. (§ M(2)(b)), *emphasis added*.)

The Regional Water Board has not made any required determination under the Desalination Amendment, and in fact the Regional Water Board has indicated it may require additional third party analysis of the economic feasibility provisions of the Independent Scientific and Technical Advisory Panel ("ISTAP") Reports. (See July 29, 2016 letter from Santa Ana Regional Water Quality Control Board to Scott Maloni, Vice President of Poseidon Water, *attached*.).

Additionally, there are numerous problems with the ISTAP Reports. The Commission cannot rely on it as a basis for summarily excluding subsurface intakes in the Alternatives Analysis. The ISTAP Phase 1 report prematurely excluded slant wells, and the ISTAP Phase 2 report therefore only looked at intake galleries, resulting in double the cost estimate. It didn't consider the cost of using slant intake wells. The Commission cannot rely on this

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

faulty analysis, and exclude the Ocean Plan's preferred desalination intake technology from the Alternatives Analysis for the Project's intakes. This is illegal under CEQA.

O31-14
cont.

Further, the SEIR fails to analyze the feasibility of comingling brine with wastewater. The Desalination Amendment states that, "the preferred technology for minimizing intake and mortality of all forms of marine life resulting from brine discharge is to commingle brine with wastewater (e.g., agricultural, municipal, industrial, power plant cooling water, etc.) that would otherwise be discharged to the ocean" (§ M(2)(d)(2)(a).) The SEIR does not analyze any possibility of comingling with wastewater and instead accepts without question Poseidon's proposal to use the less preferred option of employing a multiport diffuser.

O31-15

The SEIR fails to discuss alternative options and the narrow focus precludes and alternative sites to minimize adverse impacts. Multi port diffusers are considered the second best option in the desalination amendment but only "when the brine cannot be diluted by wastewater." The SEIR cannot simply ignore this core component of the desalination amendment and is further evidence that a subsequent EIR is necessary in order to evaluate the Project as a whole as alternative sites or piping scenarios may enable comingling of brine with wastewater.

Finally, there must be a true "No Project" alternative, where the entire desalination plant is not built.

O31-16

5. The SEIR Must Reconsider the Purpose and Need for the Project

O31-17

The purpose and need for the Project must be reanalyzed in this SEIR in light of new information regarding demand and supply of the proposed Project's product water. It has not been proven that there is actually a need for the Project and its magnitude.

A high percentage of water supply in north Orange County is from groundwater, and self-sufficiency has increased with the Orange County Water District's ("OCWD") Groundwater Replenishment System ("GWRS") project (the world's largest wastewater recycling facility). And additional expansion of GWRS is planned, with the next expansion adding nearly as much water supply capacity as Poseidon's Project - from 100 MGD to 130 MGD.³ This supply will be without the associated environmental and cost impacts of the proposed desalination plant.

Additionally, new water demand projections revealed in February 2016 by OCWD showed significantly reduced water demand than OCWD previously reported - a difference of about 90,000 acre feet. New estimates show that demand by 2040 will be closer to 435,000 acre feet as opposed to 525,000 acre-feet per year.⁴

Accordingly, the SEIR needs to reanalyze the need for the 50 mgd Project proposed.

³ See <https://www.ocwd.com/media/4267/gwrs-technical-brochure-r.pdf>

⁴ See <http://www.ocregister.com/articles/water-703092-estimate-demand.html>

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

Further, Indirect Potable Reuse (IPR) projects⁵ are planned elsewhere in Southern California adding reliability to the region. Some, like San Diego Pure Water, will provide indirect reliability to Orange County by making the Metropolitan Water District (“MWD”) portfolio more reliable. The Los Angeles County and MWD planned IPR/GWRS project will provide both indirect and direct benefits by adding 67,000 acre feet per year during the project’s first operational phase and 30 miles of distribution lines to replenish both Los Angeles and Orange County groundwater basins. Approximately 168,000 acre feet per year will be produced to replenish groundwater systems in additional operational phases.⁶

Again, this underscores the need to reanalyze the purpose and need for the Project, and its current scale. And similarly, the consequences of constructing a Project that is not needed must be fully addressed.

In December 2015, despite several years of drought, the San Diego County Water Authority (“SDCWA”) had too much water, and was running low on available storage options, which were nearly filled to capacity. Despite this oversupply of water, the SDCWA was forced by its ‘take or pay’ contract to buy Poseidon’s expensive water (water officials agreed in 2012 to buy the water whether they need it or not, to make the plant financially feasible).

As a result, in February 2016, SDCWA dumped half a billion gallons of excess treated drinking water into the Lower Otay Reservoir. Of the three kinds of treated water it dumped, Poseidon’s water was by far the most expensive, at roughly \$2,131 per acre foot compared to Metropolitan’s treated water, at \$942 per acre foot, and the County’s treated water at \$830 per acre foot. After being dumped, the treated drinking water must be re-treated in order to be drinkable again. (See Ry Rivard, San Diego’s Oversupply of Water Reaches a New, Absurd Level, Voice of San Diego, February 2, 2016, available at <http://www.voiceofsandiego.org/topics/government/san-diegos-oversupply-of-water-reaches-a-new-absurd-level/>.)

According to the Voice of San Diego, in 2016 “desalinated ocean water will cost San Diego water agencies at least \$113.6 million — more than double the \$45.2 million they would pay for the same amount of imported water, which remains available despite a statewide drought.” (See Morgan Cook, While other parts of California are bone dry, San Diego faces the opposite problem: too much water, Los Angeles Times, Nov. 25, 2015, available at <http://www.latimes.com/local/lanow/la-me-drought-watch-20151125-story.html>)

The waste of water, and burdening ratepayers with overpriced water, which have been impacts of Poseidon’s Carlsbad plant, must not happen in Orange County with the proposed

⁵ IPR refers to the blending of advanced treated, recycled or reclaimed water into a natural water source (groundwater basin or reservoir) that could be used for drinking (potable) water after further treatment

⁶ See

http://mwdh2o.com/PDF_About_Your_Water/Regional_Recycled_Water_Supply_Program.pdf

O31-17
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

Huntington Beach plant. The SEIR must be revised to include a thorough analysis of the purpose and need for the Project, in order to avoid these impacts.

O31-17
cont.

6. New Information Regarding Poseidon's Violations at its Carlsbad, CA Desalination Plant Must be Included in this EIR.

O31-18

New information has come to light regarding Poseidon's similar facility in Carlsbad, which has concerning implications with respect to the proposed Project. This information increases the likelihood that the proposed Project will result in more serious water quality impacts, and must be considered in a Subsequent EIR.

Poseidon's Carlsbad desalination plant has been cited by the State Water Resources Control Board and the San Diego Regional Water Quality Control Board for multiple permit violations, including water quality exceedences. This new information must be included in this SEIR, as it illustrates the foreseeable increased risk for violations at the proposed Huntington Beach project, and is cause for increased concern about more serious negative impacts on surrounding water quality, the marine environment, and species. Poseidon received 13 violations between September 2015 and June 2016, eight of which were for chronic toxicity.⁷ In its annual permit discharge monitoring report for 2016, which Poseidon submitted in February 2017, Poseidon stated that it had exceeded chronic toxicity limits in 35 out of 116 - or 30% - of chronic toxicity tests.⁸

More recently, between January and May 2017, the Carlsbad plant has been cited for 14 violations. Records of these violations are available at the State Water Resources Control Board's website, here:
<https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?reportName=facilityAtAGlance&placeID=640063>

Poseidon's failure to resolve this issue despite multiple violation notices must be taken into consideration in the SEIR.

7. The SEIR Must Adequately Address and Mitigate Climate Change Impacts

O31-19

The SEIR, Sections 8.0 and 8.1 suggest that discussion of climate change and sea level rise related impacts are not required under CEQA, and are merely being considered voluntarily. It further restricts its consideration of this issue narrowly, to impacts on the intake and outfall components.

⁷ See

<https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?reportName=facilityAtAGlance&placeID=640063>

⁸ See Poseidon Channelside, Cover letter for NPDES Discharge Monitoring Report – Annual 2016 NPDES No. CA019223 (February 28, 2017), <http://bit.ly/2pb3pOH>.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

However, as explained above, the State Lands Commission must consider all impacts of the entire desalination Project, and this includes impacts stemming from sea level rise and coastal erosion.

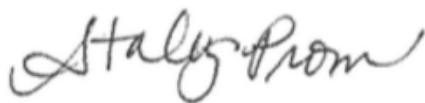
In California Building Industry Association v. Bay Area Air Quality Management District (2015) 62 Cal.4th 369, the court held that while the general rule is that CEQA does not require an analysis of how existing environmental conditions will impact a project's future users or residents, *when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users.* (*Id.*, at 389.)

Here, as the SEIR acknowledges, the proposed Project is estimated by the State Water Resources Control Board to result in emissions of approximately 80,000 MTCO₂E/yr, based on an annual electricity use of 750,000 kilowatt-hours, before mitigation (again, pursuant to the above discussion, impacts and mitigation must be analyzed separately). This is significant, as it greatly exceeds the SCAQMD's threshold of 10,000 MTCO₂E/yr, and will contribute to global climate change, and exacerbate various climate related impacts, including sea level rise. Accordingly, CEQA requires an adequate evaluation and mitigation of the potential impacts related to sea-level rise and coastal erosion – critical issues given the coastal location of this proposed Project. This analysis is not something the Commission "may" consider, but instead is a legal requirement.

Conclusion

For the foregoing reasons, we respectfully request that the Commission revise the Supplemental EIR to be a comprehensive Subsequent EIR addressing all changes to the Project, changes in circumstances, and new information, in order to properly assess all of the Project's potentially significant impacts, including cumulative impacts, and all appropriate measures to mitigate those impacts.

Sincerely,



Staley Prom
Surfrider Foundation Legal Associate

O31-19
cont.

O31-20

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)



O31-21

Santa Ana Regional Water Quality Control Board

July 29, 2016

Scott Maloni, Vice President
Poseidon Water
5780 Fleet Street, Suite 140
Carlsbad, CA 92008

PROPOSED POSEIDON WATER HUNTINGTON BEACH DESALINATION PROJECT, CALIFORNIA WATER CODE SECTION 13142.5 (b) DETERMINATION REQUEST AND REPORT OF WASTE DISCHARGE– REQUEST FOR ADDITIONAL INFORMATION AND THIRD PARTY ANALYSIS

Dear Mr. Maloni:

This letter provides an update of the status of the above-referenced process, identifies the key issues that remain open, and sets forth a process for resolving them. While the permitting requirements are complex and require substantial information and analysis, we are committed to resolving these issues as expeditiously as possible.

In 2012, the Santa Ana Regional Water Quality Control Board (Regional Water Board) adopted Order No. R8-2012-0007, NPDES No. CA8000403 (2012 Order). The 2012 Order conditionally permitted the Poseidon Water (Poseidon) Huntington Beach Desalination Project (Project), as proposed at that time, to intake seawater and to discharge waste in accordance with the provisions contained therein. The 2012 Order is set to expire on February 1, 2017. Due to Poseidon's material modifications to the proposed Project and State Water Resources Control Board's (State Water Board's) adoption of new requirements for desalination facilities described below, the 2012 Order is no longer valid for the Project as currently proposed.

On May 6, 2015, the State Water Board adopted the *Amendment to the Water Quality Control Plan for the Ocean Waters of California (Ocean Plan) Addressing Desalination Facility Intakes, Brine Discharges, and the Incorporation of Other Non-substantive Changes* (Desalination Amendment). The Office of Administrative Law approved the Desalination Amendment on January 28, 2016. The United States Environmental Protection Agency approved the portions of the Desalination Amendment that implement the federal Clean Water Act on April 7, 2016. Therefore, the Desalination Amendment is now fully in effect.

The Desalination Amendment requires the owner or operator of a proposed new or expanded desalination facility to submit sufficient information for the applicable regional

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

water quality control board to analyze a range of feasible alternatives for the best available site, design, technology, and mitigation measures to minimize intake and mortality of all forms of marine life that may occur as the result of the construction and operation of the desalination facility, in order to comply with Water Code section 13142.5, subdivision (b) (13142.5(b)). (Ocean Plan, Chapter III.M.2.a(1).) The Desalination Amendment includes very specific analyses, studies, and considerations that the regional water quality control boards must evaluate in determining whether a proposed desalination facility utilizes the best available site, design, technology, and mitigation measures feasible. (Ocean Plan, Chapter III.M.2.) The Desalination Amendment also states that a regional water quality control board, in consultation with State Water Board staff, may require an owner or operator of a proposed desalination facility to provide additional studies or information, and may require the owner or operator to hire a neutral third party entity to review studies and models and make recommendations to the regional water quality control board. (Ocean Plan, Chapter III.M.2.a(1).)

O31-21
cont.

The proposed Project is a "new" desalination facility. (Ocean Plan, Chapter III.M.1.b(3).) Therefore, it is necessary for Poseidon to submit the information required by the Desalination Amendment, and for the Regional Water Board to conduct a new Water Code section 13142.5(b) analysis for the Project in accordance with the requirements of the Desalination Amendment. Once the Regional Water Board receives and analyzes the information required by the Desalination Amendment, it will schedule a public hearing to determine whether the Project complies with Water Code section 13142.5, subdivision (b).

On March 15, 2016, Poseidon submitted its request for a Water Code section 13142.5(b) determination. Poseidon's submittal included a detailed matrix (Appendix A to the submittal) with Poseidon's key recommendations, conclusions, and findings as well as supporting studies and reports regarding the proposed Project's compliance with the Desalination Amendment. Over the past several months, the Regional and State Water Board staff and California Coastal Commission staff have conducted an initial review of Appendix A and the supporting documents during a formal interagency consultation process. Poseidon has also provided additional information, including proposed modifications to the Project, during the review and consultation process. On June 30, 2016, Poseidon submitted its Report of Waste Discharge for renewal of the 2012 Order (ROWD). The ROWD requests that the Regional Water Board establish requirements governing the Project under the co-located, temporary, and permanent stand-alone operations. The ROWD included an updated copy of materials submitted on March 15, 2016 addressing Project elements intended to comply with the Desalination Amendment and Water Code section 13142.5(b), as well as an update on compliance with the California Environmental Quality Act (CEQA) and documentation related to the operational marine life mitigation proposed to address impacts from the Project. The ROWD also included a request that the Regional Water Board utilize the NPDES public hearing process to consider all aspects of permitting the Project, as opposed to separately considering the Project's compliance with Water Code section

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

13142.5(b) and the Desalination Amendment and deferring consideration of the adoption of NPDES requirements for the Project to a later proceeding.

O31-21
cont.

On July 14, 2016, representatives from the Regional Water Board, State Water Board, and California Coastal Commission met with Poseidon to provide an update on the formal consultation process and to provide initial feedback on Appendix A and the supporting documentation. During the meeting, State and Regional Water Board staff explained that certain information and data gaps exist and need to be filled before Regional Water Board staff will have sufficient information to make recommendations to the Regional Water Board regarding compliance with the Desalination Amendment and a new Water Code section 13142.5(b) determination, as well as to process Poseidon's ROWD. In terms of requesting additional information, State and Regional Water Board staff intend to utilize a step-wise approach to focus additional information requests on larger unresolved items that will inform other factors in the determination analysis. As explained at the meeting, analysis and review of the information submitted related to these larger unresolved items may lead to additional requests for information pursuant to the Desalination Amendment and Water Code section 13142.5(b).

At the meeting, State and Regional Water Board staff identified the following main unresolved items: (1) the identified need for the desalinated water (Ocean Plan, Chapter III.M.2.b(2)); (2) analysis of alternative sites (Ocean Plan, Chapter III.M.2.b); and (3) potential neutral third party analysis of certain portions of the Independent Scientific Technical Advisory Panel (ISTAP) Phase 2 Report related to economic analysis. (Ocean Plan, Chapter III.M.2.a). Following discussion of these unresolved items, State and Regional Water Board staff agreed to provide Poseidon with more detailed information requests related to these areas. Regarding the identified need for desalinated water, on July 26, 2016, Poseidon submitted additional documentation responsive to concerns raised at the July 14 meeting. State and Regional Water Board staff will review this material and respond with any additional information requests or questions. Regarding the analysis of alternative sites, please see the enclosed document which contains specific information requests. Regarding third party analysis of portions of the ISTAP Phase 2 Report related to economic analysis, State and Regional Water Board staff agreed to more clearly identify the analysis necessary to comport with the Desalination Amendment and will request any additional information/analysis in the near future.

Additionally, at the July 14, 2016 meeting, we were informed that Orange County Water District (OCWD) is conducting additional CEQA analysis related to its preferred engineering approach for transporting and ultimately injecting the projected desalinated water into its groundwater basin. Our understanding is that OCWD is targeting the first or second quarter of 2017 for completion of its CEQA process. As we explained during the meeting, it may be difficult for the Regional Water Board to make a determination regarding the Project's compliance with Water Code section 13142.5(b) before OCWD, as the lead agency, has completed its CEQA analysis.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

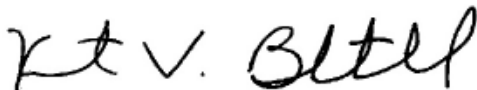
Finally, the Regional Water Board intends to consolidate into one proceeding the two upcoming decisions: the determination of compliance with Water Code section 13142.5(b) and the consideration of adoption of NPDES requirements for the Project. To ensure an efficient process and effective public participation, the Regional Water Board intends to consider all aspects of permitting the Project during one proceeding. This proceeding will comply with all public hearing and process requirements applicable to an NPDES permit.

O31-21
cont.

We look forward to assisting you in developing a time schedule for deliverables identified in the enclosure, and will be in contact soon regarding any additional information requests related to the need for desalinated water and/or the economic analysis for the Project contained in the ISTAP Phase 2 Report.

If you have any questions or would like to discuss further, please contact me at (951) 782-3286 or Milasol Gaslan at (951) 782-4419.

Sincerely,



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

Enclosure: Alternative Site Analysis Information Needs

cc w/ enclosure:

Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board,
Jonathan.Bishop@waterboards.ca.gov

Karen Larsen, Deputy Director of the Division of Water Quality, State Water
Resources Control Board, Karen.Larsen@waterboards.ca.gov

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COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

Kimberly Tenggardjaja, State Water Resources Control Board,

Kimberly.Tenggardjaja@waterboards.ca.gov

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Sean Bothwell, California Coastkeeper Alliance

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Colin Kelly, Orange County Coastkeeper

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COMMENT SET O31: SURFRIDER FOUNDATION (cont.)**Information Requests for Huntington Beach Desalination Project (HBDP) Related to Analysis of Alternative Sites****July 29, 2016****O31-21****Ecological data**

Please provide local ecological data (e.g., from the Southern California Bight Monitoring Program) on population density and diversity for all forms of marine life as a function of depth and also distance from the Orange County shoreline. Additionally, based on Poseidon's technical memo titled "Evaluation of a Long-distance Offshore Intake for the Huntington Beach Desalination Plant" (dated April 29, 2016), the location with the least intake mortality is 1.2 miles offshore. If you disagree with this conclusion, please provide any other studies or information that may refute this. This information can be provided separately from the table below.

Table of Technological and Environmental Information for Alternative Sites

State and Regional Water Board staff drafted the table below and entered information related to technological and environmental factors affecting the feasibility of identified alternative sites from the documents that Poseidon submitted with the Water Code section 13142.5(b) determination request for the HBDP. This table includes blank fields and targeted questions for Poseidon to populate and answer. This additional information will assist staff in thoroughly evaluating alternative sites for the HBDP in a step-wise fashion. To further facilitate staff's review, please include references to where responses to the table can be found, including the title of the report or study and section and subsection, if applicable. Staff recognizes that Poseidon's prior submittals may include some of the information requested in the table below and that staff may have missed this information during its initial review. Staff appreciates Poseidon's assistance in identifying any missing information. Staff will use information provided in response to this table to narrow down and identify the alternative sites that will undergo additional analysis related to economic and social factors affecting feasibility of a particular site.

The "other considerations" column is an optional field that Poseidon can use to identify and describe additional technological and environmental factors that may affect the feasibility of a particular site. For example, if proximity to existing infrastructure for distribution of product water is a technological factor that may limit a site's feasibility, please provide information to support this conclusion. Please limit information in this column to technological and environmental factors affecting a particular site's feasibility, as other factors, including economics and social impacts, will be considered later.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

Site	Presence of Sensitive habitats							Presence of Sensitive species (If present, please specify which)	Presence of MPAs (If present, please specify which)	Presence of ASBSs	Intake	Discharge	Other considerations (Optional)
	Kelp beds (Please indicate absence or presence)	Rocky substrate (Please indicate absence or presence)	Surfgrass beds (Please indicate absence or presence)	Eelgrass beds (Please indicate absence or presence)	Oyster beds (Please indicate absence or presence)	Spawning grounds for state or federally managed species (Please indicate absence or presence)	Market squid nurseries (Please indicate absence or presence)						
Property 1A	absent	?	absent	absent	?	?	?	?	Present – Bolsa Bay State Marine Conservation Area and Bolsa Chica Basin State Marine Conservation Area	absent	Is it technically possible to install subsurface intake wells that can withdraw 106 MGD of feed water? If so, how many wells would be needed?	Is it possible to commingle all of the discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
											Combined intake system – what is maximum amount of feed	Is it possible to commingle all of the	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

											water that can be withdrawn through a subsurface intake?	discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
Property 1B	absent	?	absent	absent	?	?	?	?	Present – Bolsa Bay State Marine Conservation Area and Bolsa Chica Basin State Marine Conservation Area	absent	Is it technically possible to install subsurface intake wells that can withdraw 106 MGD of feed water? If so, how many wells would be needed?	Is it possible to commingle all of the discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
											Combined intake system – what is maximum amount of feed	Is it possible to commingle all of the	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

											water that can be withdrawn through a subsurface intake?	discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
Property 1C	absent	?	absent	absent	?	?	?	?	Present – Bolsa Bay State Marine Conservation Area and Bolsa Chica Basin State Marine Conservation Area	absent	Is it technically possible to install subsurface intake wells that can withdraw 106 MGD of feed water? If so, how many wells would be needed?	Is it possible to commingle all of the discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
											Combined intake system – what is maximum amount of feed	Is it possible to commingle all of the	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

											water that can be withdrawn through a subsurface intake?	discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
Property 1D	absent	?	absent	absent	?	?	?	?	Present – Bolsa Bay State Marine Conservation Area and Bolsa Chica Basin State Marine Conservation Area	absent	Is it technically possible to install subsurface intake wells that can withdraw 106 MGD of feed water? If so, how many wells would be needed?	Is it possible to commingle all of the discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
											Combined intake system – what is maximum amount of feed	Is it possible to commingle all of the	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

											water that can be withdrawn through a subsurface intake?	discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
Naval Weapons Station	absent	?	absent	absent	?	?	?	?	Present – Bolsa Bay State Marine Conservation Area and Bolsa Chica Basin State Marine Conservation Area	absent	Is it technically possible to install subsurface intake wells that can withdraw 106 MGD of feed water? If so, how many wells would be needed?	Is it possible to commingle all of the discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
											Combined intake system – what is maximum amount of feed	Is it possible to commingle all of the	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

											water that can be withdrawn through a subsurface intake?	discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
Property 1G	absent	?	absent	absent	?	?	?	?	Present – Bolsa Bay State Marine Conservation Area and Bolsa Chica Basin State Marine Conservation Area	absent	Combined intake system – what is maximum amount of feed water that can be withdrawn through a subsurface intake?	Is it possible to commingle all of the discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
											Would extending the intake pipe further offshore result in fewer	Is it possible to commingle all of the	

O31-21

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

											impacts to marine life?	discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
												Diffuser	
											Proposed surface water intake	Is it possible to commingle all of the discharge with OCSD's ocean outfall?	
												Is it possible to commingle part of the discharge with OCSD's ocean outfall?	
Segment 6	present	present	?	?	?	?	?	?	Present – Laguna Beach State Marine Conservation	absent	Is it technically possible to use subsurface intakes to withdraw 106	Is it possible to commingle part of the discharge	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

									Area and Dana Point State Marine Conservation Area		MGD of feed water? Please provide hydrogeological data to support conclusions.	with SOCWA's Aliso Creek Ocean Outfall?	
												Is it possible to commingle part of the discharge with SOCWA's San Juan Creek Ocean Outfall?	
												Diffuser	
											Combined intake system – what is maximum amount of feed water that can be withdrawn through a subsurface intake?	Is it possible to commingle part of the discharge with SOCWA's Aliso Creek Ocean Outfall?	
												Is it possible to commingle part of the discharge with SOCWA's San Juan	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

												Creek Ocean Outfall?	
												Diffuser	
Segment 7	present	?	?	?	?	?	?	?	Present - Dana Point State Marine Conservation	absent	Is it technically possible to use subsurface intakes to withdraw 106 MGD of feed water? Please provide hydrogeological data to support conclusions.	Is it possible to commingle part of the discharge with SOCWA's Aliso Creek Ocean Outfall?	
												Is it possible to commingle part of the discharge with SOCWA's San Juan Creek Ocean Outfall?	
												Diffuser	
											Combined intake system – what is maximum amount of feed water that can be withdrawn through a	Is it possible to commingle part of the discharge with SOCWA's	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

											subsurface intake?	Aliso Creek Ocean Outfall?	
												Is it possible to commingle part of the discharge with SOCWA's San Juan Creek Ocean Outfall?	
												Diffuser	
Segment 8	present	present	?	?	?	?	?	?	absent	absent	Is it technically possible to use subsurface intakes to withdraw 106 MGD of feed water? Please provide hydrogeological data to support conclusions.	Is it possible to commingle part of the discharge with SOCWA's Aliso Creek Ocean Outfall?	
												Is it possible to commingle part of the discharge with SOCWA's San Juan	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

												Creek Ocean Outfall?	
												Diffuser	
											Combined intake system – what is maximum amount of feed water that can be withdrawn through a subsurface intake?	Is it possible to commingle part of the discharge with SOCWA's Aliso Creek Ocean Outfall?	
												Is it possible to commingle part of the discharge with SOCWA's San Juan Creek Ocean Outfall?	
												Diffuser	
Segment 9	present	?	?	?	?	?	?	?	absent	absent	Is it technically possible to use subsurface intakes to withdraw 106 MGD of feed water? Please provide hydrogeological data to support	Is it possible to commingle part of the discharge with SOCWA's Aliso Creek Ocean Outfall?	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (cont.)

											conclusions.	Is it possible to commingle part of the discharge with SOCWA's San Juan Creek Ocean Outfall? Diffuser	
											Combined intake system – what is maximum amount of feed water that can be withdrawn through a subsurface intake?	Is it possible to commingle part of the discharge with SOCWA's Aliso Creek Ocean Outfall?	
												Is it possible to commingle part of the discharge with SOCWA's San Juan Creek Ocean Outfall? Diffuser	

O31-21
cont.

COMMENT SET O31: SURFRIDER FOUNDATION (Public Meeting Transcript)

MS. PROM: Good evening. Staley Prom, staff attorney for the Surfrider Foundation. We would like to incorporate our scoping comments again by reference, and I would like to respectfully reemphasize the following key points. First, given the significant changes that have been proposed to Poseidon's Desal project and the significantly changed circumstances, CEQA guidelines clearly require a subsequent EIR analyzing changes and impacts of the entire project. So this includes all the foreseeable changes and impacts of the water distribution component as well as all new development proposals near the site and all the changed circumstances that have been documented in the 2014 Coastal Commission staff report. The CEQA guidelines are clear, the subsequent EIR must be prepared by the public agency that grants the next discretionary approval for the project, and no other responsible agency can grant approval for the project until the subsequent EIR is certified. After the 2010 approval, the City's role as state lead agency ended. And now, as the first agency to issue a discretionary approval, according to the Interagency Permit Agreement it's the State Lands Commission that's required to prepare the

O31-22

O31-23

O31-24

COMMENT SET 031: SURFRIDER FOUNDATION (Public Meeting Transcript)

subsequent EIR. The Regional Water Board and Coastal Commission cannot grant any approval for the project until the subsequent EIR is certified.

031-24
cont.

Simply, the Commission is not continuing its role as a responsible agency, but has stepped into the role of lead agency. Even the interagency agreement is clear that this CEQA document must be sufficient for the Regional Board and Coastal Commission to rely on, and unfortunately this draft document is not.

Surfrider also has some concerns, and I'll quickly go through some of our partners who will be elaborating on these. The draft's approach constitutes piecemealing under CEQA and

031-25

defines the project too narrowly. The alternatives analysis is gravely insufficient and omits the subsurface intake which are the preferred technology in the Desal amendment. It is inadequately in line with the current needs for this project. Further alternative sites analysis is needed in this document, including where subsurface intake may be feasible. New information regarding the Poseidon's Carlsbad plant must be considered since it's been cited for multiple permit violations, and sea level threats must be thoroughly considered, thank you.

031-26

031-27

RESPONSE TO COMMENT SET O31: SURFRIDER FOUNDATION)

- O31-1 The commenter's assertion that the Supplemental EIR does not include or address the issues raised in the commenter's oral and written scoping comments with respect to the proposed desalination plant will be provided to the Commission for consideration in its decision-making process. The Project that will be considered by the Commission is the proposed Lease Modification Project, as defined in Section 2 of this Supplemental EIR. (See also master responses MR-1, *Scope of the Commission's Discretionary Action*, and MR-2, *Lease Modification Project Scope*.)
- O31-2 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O31-3 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O31-4 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O31-5 See master responses MR-2, *Lease Modification Project Scope*, and MR-4, *Piecemealing*.
- O31-6 The commenter asserts that the Supplemental EIR only discusses GHG emissions as they relate to the construction and operation of the wedgewire screens and multiport diffuser, and does not include an analysis of GHG emissions associated with the water distribution component. Please see master responses MR-2, *Lease Modification Project Scope*, and MR-7, *Cumulative Impacts*, Subpart B, *Recharge Distribution Components and Distribution Pipeline*, regarding the water distribution system.
- Supplemental EIR Section 4.6.5 has been revised to clarify that, independent of APM-7, the Lease Modification Project construction and operational GHG emissions do not create a cumulatively considerable impact when analyzed with closely related projects in terms of geographic area and time limits.
- O31-7 The comment challenges the 2010 FSEIR GHG analysis and impact determination of less than significant. See master response MR-1, *Scope of the Commission's Discretionary Action*, regarding the CSLC's discretionary action for the Lease Modification Project and the prior approval of the 2010 FSEIR.

The comment further states that the Draft Supplemental EIR improperly considers the GHG emissions together with Poseidon's proposed mitigation measures prior to analyzing the impact significance. Section 4.6.4 has been revised to clarify that, independent of APM-7, the construction and operational GHG emissions associated with Lease Modification Project components and activities have a less-than-significant impact.

- O31-8 The comment asserts that the Draft Supplemental EIR relies upon or incorporates as mitigation the Energy Minimization and Greenhouse Gas Reduction Plan in determining the significance of Lease Modification Project GHG impacts. See response to comment O31-7.
- O31-9 The comment argues that the Supplemental EIR must separately analyze the GHG emissions, considering the 2010 FSEIR project as well as the water distribution system, and provide a full cumulative GHG emissions analysis. See master responses MR-2, *Lease Modification Project Scope*, and MR-7, *Cumulative Impacts*, Subpart B, *Recharge Distribution Components and Distribution Pipeline*, regarding the water distribution system. Also see response to comment O31-7, and response to comment O10-38 regarding cumulative impact analysis.
- O31-10 See response to comment O31-7.
- O31-11 See master response MR-2, *Lease Modification Project Scope*, and MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O31-12 Supplemental EIR Table 7-1, *Mitigation Monitoring Program*, includes descriptions of the monitoring and reporting actions needed for each mitigation measure. See also response to comment A2-14 regarding agency responsibility for mitigation measure compliance.
- O31-13 The commenter's assertion that Poseidon has disingenuously and inaccurately stated that the Energy Minimization and Greenhouse Gas Reduction Plan constitutes "voluntary" GHG reductions through offsets will be provided to the Commission for consideration in its decision-making process. The Project that will be considered by the Commission is the proposed Lease Modification Project, as defined in Section 2 of this Supplemental EIR. (See also master responses MR-1, *Scope of the Commission's Discretionary Action*, and MR-2, *Lease Modification Project Scope*.)
- O31-14 See master response MR-8, *Alternatives*.

- O31-15 The commenter states that the Supplemental EIR does not consider commingling brine with wastewater as an alternative, when the Desalination Amendment defines that multiport diffusers are only the second best option, if commingling cannot be implemented. The Executive Summary (on page ES-3, lines 1 through 17) describes the Desalination Plan feasibility requirements for brine discharge for desalination projects. The Supplemental EIR describes the Desalination Amendment requirements for evaluating alternatives in discharge requirements. If the RWQCB, pursuant to Water Code section 13142.5, subdivision (b), determines subsurface intakes are not feasible and brine cannot be diluted by wastewater and there are no live organisms in the discharge, both the multiport diffuser and wedgewire screens must be installed prior to operation of the HB Desalination Plant consistent with Desalination Amendment requirements (see Ocean Plan Chapters III.M.2.d(1)(c)(i) and III.M.2.d(a),(b)). See master response MR-3, *Responsible vs. Lead Agency & Supplemental vs. Subsequent EIR*, Subpart 4D.2, *2015 Desalination Amendment and 2014 and 2015 ISTAP Reports*, regarding compliance with the Desalination Amendment.
- O31-16 The Supplemental EIR considers a narrower action than the proposed project evaluated in the 2010 FSEIR. The City of Huntington Beach approved the HB Desalination Facility based on that Final EIR, and the appropriate No Project Alternative was included for the City's consideration. The Lease Modification Project is based on the narrower action, as defined in master response MR-2, *Lease Modification Project Scope*. Given the prior approval of the HB Desalination Project and issuance of the lease of State lands, the Supplemental EIR's definition of the No Project Alternative is that the lease amendment approved by the CSLC in 2010 would remain in effect.
- O31-17 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR* regarding project need.
- O31-18 The commenter's request that Poseidon's Carlsbad plant be considered will be provided to the Commission for consideration in its decision-making process. The Project that will be considered by the Commission is the proposed Lease Modification Project, as defined in Section 2 of this Supplemental EIR. (See also master responses MR-1, *Scope of the Commission's Discretionary Action*, and MR-2, *Lease Modification Project Scope*.)
- O31-19 See master responses MR-2, *Lease Modification Project Scope*, and MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent*

- EIR*, Subpart D.3, regarding sea-level rise and climate change. See also Response to Comment A6-2 regarding sea-level rise.
- O31-20 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O31-21 This comment is a copy of the July 29, 2016 letter from the RWQCB to Poseidon, requesting additional information and third-party analysis. This letter is not a comment on the Supplemental EIR.
- O31-22 The commenter's request that the commenter's scoping comments are incorporated by reference will be provided to the Commission for consideration in its decision-making process. The Project that will be considered by the Commission is the proposed Lease Modification Project, as defined in Section 2 of this Supplemental EIR. (See also master responses MR-1, *Scope of the Commission's Discretionary Action*, and MR-2, *Lease Modification Project Scope*.)
- O31-23 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O31-24 See master response MR-3, *Responsible Vs. Lead Agency & Supplemental Vs. Subsequent EIR*.
- O31-25 See master responses MR-2, *Lease Modification Project Scope*, and MR-4, *Piecemealing*.
- O31-26 This comment presents "Information Requests for Huntington Beach Desalination Project (HBDP) Related to Analysis of Alternative Sites." See master response MR-8, *Alternatives*.
- O31-27 Please refer to Section 8.1, *Climate Change and Sea-Level Rise Considerations*, for discussion of potential effects of sea-level rise on the Lease Modification Project. See also Response to Comment A6-2 regarding sea-level rise. As discussed in Section 8.1, "because the existing HBGS pipelines are submerged (at a depth of approximately 33 feet mean lower low water [MLLW]) and the proposed wedgewire screens and multiport diffuser would also be submerged and located on the pipeline risers above the seafloor, the inundation/flooding risk presented by sea-level rise is not a factor affecting the [CSLC]'s jurisdiction at this time and location, and until more is observed or known about how climate effects alter sediments in the nearshore subtidal areas where the facilities are located, any conclusions or statements about risks would be speculative."

The commenter's request that Poseidon's Carlsbad plant be considered will be considered by the CSLC in will be provided to the Commission for consideration in its decision-making process. The Project that will be considered by the Commission is the proposed Lease Modification Project, as defined in Section 2 of this Supplemental EIR. (See also master responses MR-1, *Scope of the Commission's Discretionary Action*, and MR-2, *Lease Modification Project Scope*.)

II.5.32 Comment Set O32: William C. Velasquez Institute



William C. Velásquez Institute

July 14, 2017

The Honorable Gavin Newsom, Chairman
California State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, CA 95825-8202

RE: SUPPORT for Huntington Beach Desalination Project SEIR Certification and Land Lease Approval

Dear Chairman Newsom,

The William C Velasquez Institute (WCVI), a leading US Latino policy organization, is writing in support of the proposed Huntington Beach (HB) desalination plant. WCVI sees the HB plant as a paramount quality of life issue for the million strong Orange County Latino community.

In 2016 WCVI launched its *ProAgua* education campaign and hosted a Latino Summit on Water Policy and Climate Resiliency which issued a resolution (see attached) signed by 50 Latino climate action leaders from across Southern CA that supports the development of the HB plant.

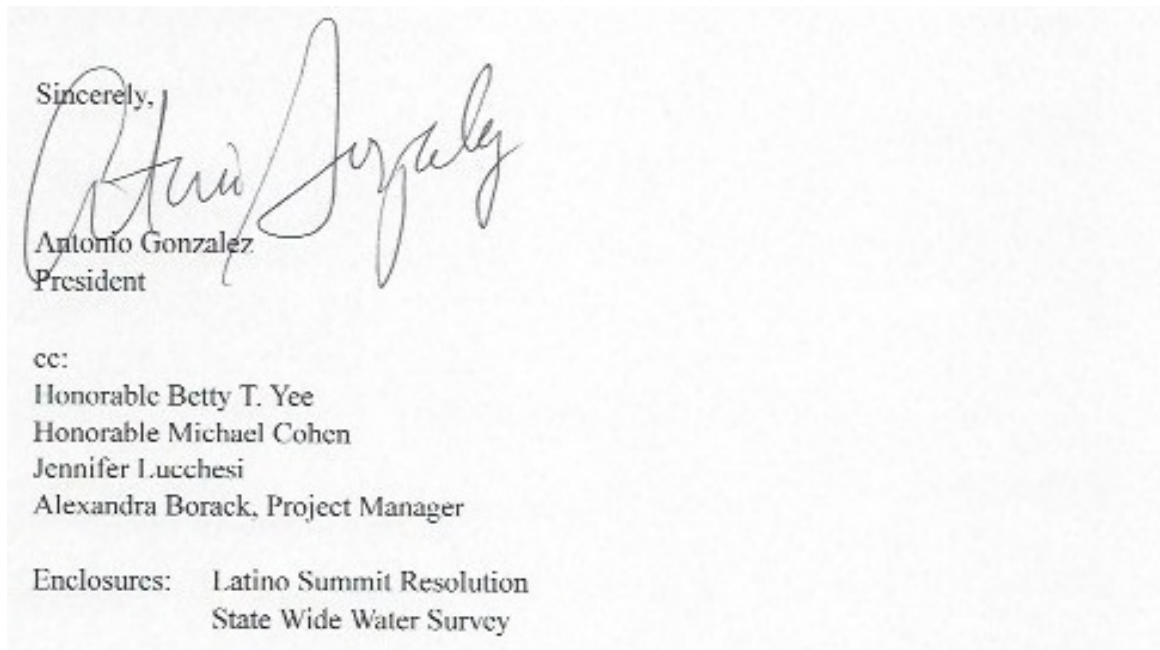
As part of our *ProAgua* work, WCVI recently undertook a state-wide water survey (see attached) which found that California voters, across every demographic group and in every region of the state, overwhelmingly support seawater desalination: nine out of ten voters (90%) favor desalination, including a majority (56%) that strongly favor the development of seawater desalination in California; this includes 90% of Latinos and 81% of African Americans. This same widespread support for desalination was echoed in WCVI's 2016 OC Latino voter survey.

Investments in climate change adaptation infrastructure like the HB desalination plant are critical for ensuring continuity in OC's quality of life. For WCVI this is especially important as Latinos in OC will soon be the majority. Latinos enthusiastically support desalination and other investment for example in housing and schools because we see them as investments in ourselves!

The 50 million gallons a day (50MGD) of local drought proof water the HB plant would produce has been identified by the Orange County Water District (OCWD) as the single largest source of new local water available to the District. Given climate change (also referenced in the DSEIR), Orange County's dependence on imported water and growing population we believe it is essential that the DSEIR reflect the need to ensure this large local reliable source of new water as key to the continuity of OC's quality of life.

O32-1

COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)



COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)



O32-2

May 3, 2017

To: Interested Parties

From: Ben Tulchin, Corey O'Neil and David Kornahrens;
Tulchin ResearchRe: **New Statewide Survey Shows Overwhelming Support for Water
Desalination Plants in California**

Tulchin Research recently conducted an online California statewide survey among voters to assess awareness and opinions toward water desalination efforts to increase the state's drinking water supply. The poll found that voters have a high level of awareness of desalination as a water conversion method and a comparable share of voters favor efforts by the state to approve desalination plants. The poll also found that voters across the state are more likely to vote for a candidate for elected office who supports water desalination projects. Below are the key findings from this study.

Key Findings

This recent statewide survey finds that most voters in California are aware of the process of seawater desalination that turns ocean water into drinking water. Specifically, five out of six voters (84%) indicate they have heard about seawater desalination to convert ocean water into drinking water while just 16 percent of voters are either unaware (14%) or unsure (2%).

Seawater Desalination Awareness

<i>Have you heard of seawater desalination, the process that turns ocean water into drinking water by removing the salt and other impurities?</i>	
Yes	84%
No	14%
Don't Know/NA	2%
Yes - No	+70

Upon asking voters their sentiments toward the state approving desalination plants, an overwhelming majority want to see the state approve more desalination plants. Notably, nine out of ten voters (90%) favor desalination efforts, including a majority (56%) that *strongly* favors these efforts. Conversely, just five percent of voters oppose desalination efforts while five percent of voters are undecided.

COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)**Support for Water Desalination Plants in California**

Seawater desalination is a technology that could help Southern California increase its drinking water supply and reduce the need to ship water from Northern California. Would you strongly favor, somewhat favor, somewhat oppose or strongly oppose efforts by the state to approve desalination plants?

Total Favor	90%
Strongly Favor	56%
Somewhat Favor	34%
Total Oppose	5%
Strongly Oppose	2%
Somewhat Oppose	3%
Undecided	5%
Favor – Oppose	+85

O32-2
cont.

Support for investing in water desalination plants in California is felt across every key demographic group in the state.

- Both men and women support desalination, with 94 percent of men and 87 percent of women in favor;
- This sentiment crosses party lines as Republicans (92%), Democrats (90%) and independents (89%) all favor desalination efforts by wide margins;
- A solid majority of voters in every region of the state favors water desalination, including voters in Sacramento/North State and the Central Valley (93% favor in both regions) followed by voters in the Bay Area (91%), the L.A. area (90%), L.A. County (89%) and San Diego (85%);
- There is also strong support for desalination efforts among every ethnic group in the state, including Caucasian and Asian voters (91%), Latinos (90%), and African Americans (81%);
- This opinion is consistent across generations as voters under age 50 (92%) and over age 50 (89%) favor desalination at nearly equally high levels.

The table below lays out responses by key demographic groups.

COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)**Support for Water Desalination Plants in California by Demographic Group**

<i>Seawater desalination is a technology that could help Southern California increase its drinking water supply and reduce the need to ship water from Northern California. Would you strongly favor, somewhat favor, somewhat oppose or strongly oppose efforts by the state to approve desalination plants?</i>				
	<u>Favor</u>	<u>Oppose</u>	<u>Don't Know</u>	<u>+/- Diff</u>
<u>Total</u>	90%	5%	5%	+85
<u>Gender</u>				
Male	94%	5%	2%	+89
Female	87%	5%	8%	+82
<u>Party</u>				
Democrat	90%	4%	6%	+86
Republican	92%	5%	3%	+87
Independent/Other	89%	6%	5%	+83
<u>Region</u>				
LA County	89%	4%	7%	+85
LA Area	90%	5%	5%	+85
Bay Area	91%	4%	5%	+87
San Diego	85%	12%	3%	+73
Sacramento/North State	93%	0%	7%	+93
Central Valley	93%	6%	1%	+87
<u>Race</u>				
White	91%	3%	5%	+88
Latino	90%	8%	3%	+82
Black	81%	11%	8%	+70
Asian	91%	2%	6%	+89
<u>Age</u>				
18-49	92%	6%	2%	+86
50+	89%	4%	7%	+85

O32-2
cont.

We also measured voters' opinions about desalination after providing more context about the issue. The description included a cost element and described how "the cost of desalinated water could be more than traditional household water supplies," but how over time, "desalination could make water rates less expensive." Given this description, voters still overwhelmingly favor desalination (87% total favor), including nearly half (45%) who *strongly* favors it. Opposition remains muted as still only nine percent oppose desalination while four percent are undecided.

COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)**Favor/Oppose: Water Desalination Plants (Informed Ask)**

Seawater desalination provides a community with a drought-proof, locally controlled and high quality supply of drinking water. Initially, the cost of desalinated water could be more than traditional household water supplies, but over time, desalination could make water rates less expensive. Knowing this, would you strongly favor, somewhat favor, somewhat oppose or strongly oppose initially paying a few dollars more on your monthly water bill for desalinated water?

Total Favor	87%
Strongly Favor	45%
Somewhat Favor	42%
Total Oppose	9%
Strongly Oppose	3%
Somewhat Oppose	6%
Undecided	4%
Favor – Oppose	+78

O32-2
cont.

In an effort to test support for desalination plants against opposition arguments, we provided voters with two statements, one from supporters of desalination and one from opponents. Given these two differing arguments, over three-quarters of voters (78%) side with the supporter argument for desalination describing desalination as a proven drinking water technology that can provide more local, drought-proof drinking water and reduce water costs in the long term. Conversely, just 13 percent of voters side with the opponent argument describing desalination as too expensive, energy intensive and not what we should be focusing on for water conservation efforts.

Desalination Arguments: Supporters vs. Opponents

Here are two statements about seawater desalination. Please indicate which statement is closer to your opinion: (ROTATE)

<i>(Some/other) people say we need seawater desalination. It's a proven drinking water technology used around the world and there is a successful plant working in San Diego that serves as a model for future plants built in California. Seawater desalination will provide more local, drought-proof drinking water and reduce how much water must be sent from Northern California to Southern California, which is expensive, bad for the environment and not a sustainable long term water strategy.</i>	78%
<i>(Some/other) people say we don't need seawater desalination. The drought is over. It's too expensive and energy intensive and can harm marine life. We should focus more on water conservation and less on new expensive technologies that requires lots of energy from polluting fossil fuels.</i>	13%
Don't Know	10%
Supporter – Opponent	+65

COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)

quarters of voters (78% total likely, 31% *much* more likely) say they would be more likely to vote for a candidate for elected office who supports seawater desalination compared to just six percent who say they would be *less* likely and another 17 percent are unsure.

O32-2
cont.

Candidate Vote Likelihood: Water Desalination Support

<i>Would you be much more likely, somewhat more likely, somewhat less likely, or much less likely to vote for a candidate for elected office if you knew that candidate supported seawater desalination projects?</i>	
Total More Likely	78%
<i>Much More Likely</i>	31%
<i>Somewhat More Likely</i>	46%
Total Less Likely	6%
<i>Much Less Likely</i>	2%
<i>Somewhat Less Likely</i>	4%
Undecided	17%
More – Less	+72

This strong preference for a candidate who supports funding water desalination plants holds across both partisan and regional lines. The table below lays out this preference among voters by party and region.

Opinions Toward Legislators Supporting Water Desalination Plants by Party & Region

<i>Would you be much more likely, somewhat more likely, somewhat less likely, or much less likely to vote for a candidate for elected office if you knew that candidate supported seawater desalination projects?</i>				
	<u>More Likely</u>	<u>Less Likely</u>	<u>Don't Know</u>	<u>+/- Diff</u>
<u>Total</u>	78%	6%	17%	+72
<u>Party</u>				
Democrat	81%	4%	15%	+77
Republican	77%	3%	20%	+74
Independent/Other	73%	10%	16%	+63
<u>Region</u>				
LA County	79%	6%	14%	+73
LA Area	77%	4%	19%	+73
Bay Area	82%	5%	14%	+77
San Diego	76%	10%	14%	+66
Sacramento/North State	69%	4%	27%	+64
Central Valley	77%	6%	17%	+71

COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)**STATEWIDE SURVEY METHODOLOGY**

Tulchin Research designed and administered this online statewide survey conducted by professional online vendors and reached 500 likely voters in California. The survey was conducted April 20-24, 2017, and interviews were conducted in English.

The survey was conducted using an online proportional quota sampling methodology. Respondents were chosen at random from a listed panel of online users who have opted in to taking surveys. The respondent universe represents the major characteristics of the statewide population by sampling a proportional amount of each key demographic group determined by statewide voter sampling counts and quotas. The survey screened out non-registered voters and utilized demographic quotas that reflect the California electorate. The data were weighted by gender, age, ethnicity, party, region and education to ensure an accurate reflection of the statewide voter population. The sample size with these weights applied is 500.

In interpreting survey results, all surveys are subject to potential sampling error. This means the results of this survey may differ from interviewing the entire universe of all California voters. The size of the sampling error depends upon the total number of respondents in the survey, the number of respondents of a particular question, and the percentage distribution responses to a specific question, such as the desalination vote question specifically in this particular survey memo. The survey's overall margin of error is plus or minus 4.38% at the 95% confidence level. This means that 95 times out of 100, if a response to a given question to which all respondents answered was 50%, we could be 95% confident that the true percentage would fall within plus or minus 4.38% of this percentage or between 45.62% and 54.38%. Given 90% of respondents in this survey answered "Favor" to funding desalination plants, we can infer that the sampling error specific to that response is +/- 2.6% or between 87.4% and 92.6%.

The table below represents the estimated sampling error for different percentage distributions of responses.

Sampling Error by Percentage
(at 95 in 100 confidence level)

	PERCENTAGES NEAR								
	10	20	30	40	50	60	70	80	90
SAMPLE SIZE									
800	2.1	2.8	3.2	3.4	3.5	3.4	3.2	2.8	2.1
700	2.2	3.0	3.4	3.6	3.7	3.6	3.4	3.0	2.2
600	2.4	3.2	3.7	3.9	4.0	3.9	3.7	3.2	2.4
500	2.6	3.5	4.0	4.3	4.4	4.3	4.0	3.5	2.6
400	2.9	3.9	4.5	4.8	4.9	4.8	4.5	3.9	2.9
300	3.4	4.5	5.2	5.5	5.7	5.5	5.2	4.5	3.4
200	4.2	5.5	6.4	6.8	6.9	6.8	6.4	5.5	4.2
100	5.9	7.8	9.0	9.6	9.8	9.6	9.0	7.8	5.9

O32-2
cont.

COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)



Survey Methodology

- Between September 22 and October 4, 2016 Sextant Strategies & Research, in conjunction with the William C. Velazquez Institute (WCVI) conducted 404 interviews via internet with Latino registered voters in Orange County.
- Potential respondents received an email invitation to participate in the survey.
- The source of the email addresses was the California Voter File.

COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)**Key Findings**

Concern about the drought and their long term water supply are both as high, or higher, among Latino voters in Orange County as any other issue. There is overwhelming support for increasing local supplies of water and desalination is, by far, the most interesting option in these voters' minds to accomplish that.

- Four-in-five Latino voters have an “extremely” (52%) or “very” (29%) high level of concern about the drought.
 - Latino voters under 35, especially women, have the highest level of concern
- 85% call the need for new, local supplies of safe drinking water “urgent”
- Three-fourths agree that if government does not act soon, there will be a serious water shortage in their communities


Key Findings Continued

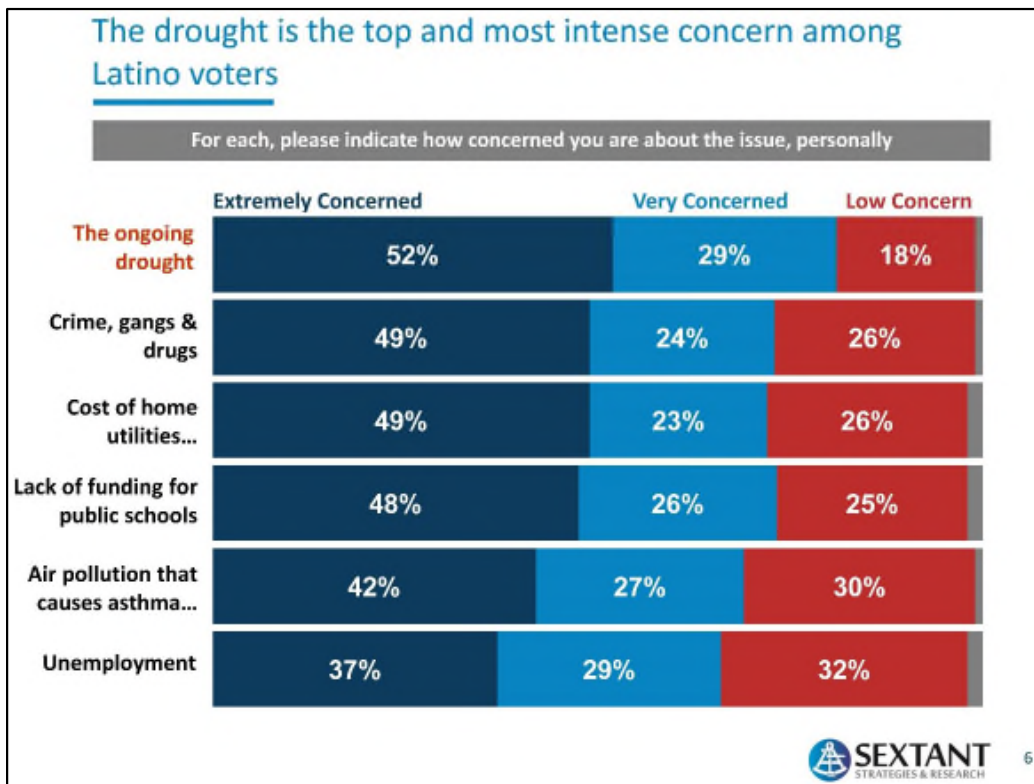
More than three-in-four Orange County Latino Voters support desalination as a way to provide a long-term local drinking water supply and four-in-five support the proposed Huntington Beach desalination plant.

- Among a variety of options, desalination is the preferred option to provide a long-term local drinking water supply by a wide margin.
- Nearly nine-in-ten agree that local government should expedite approval of water projects.
- Support for the Huntington Beach project is consistent among Democrats, Republicans and Independents.

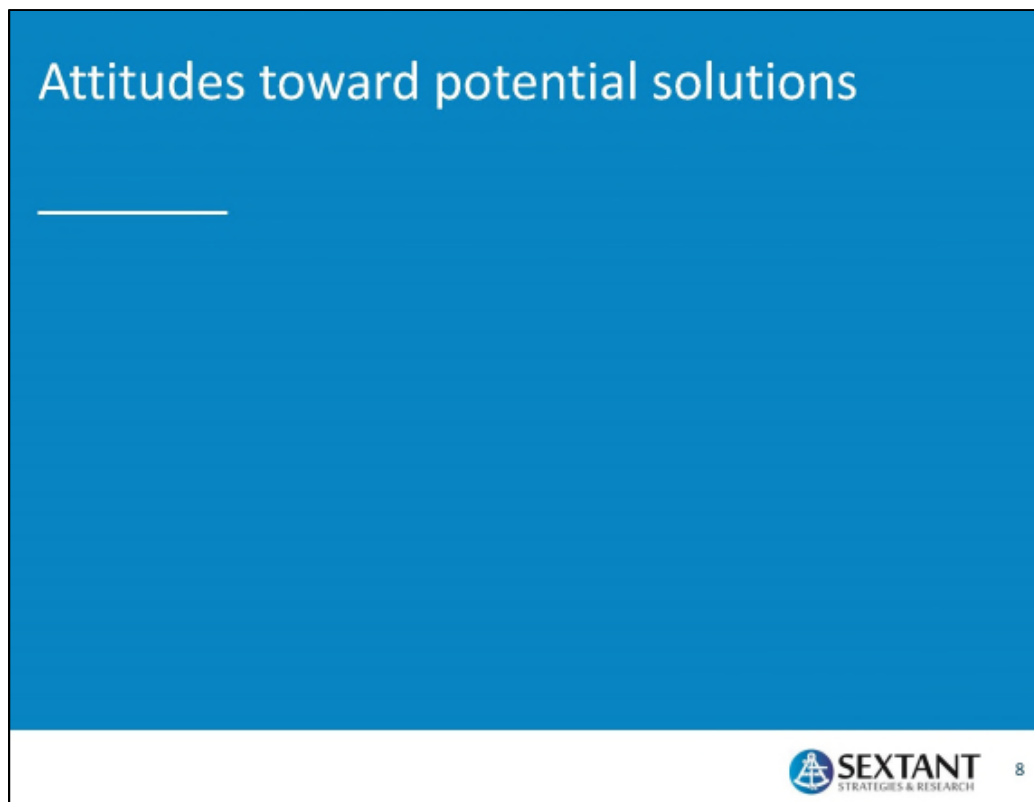
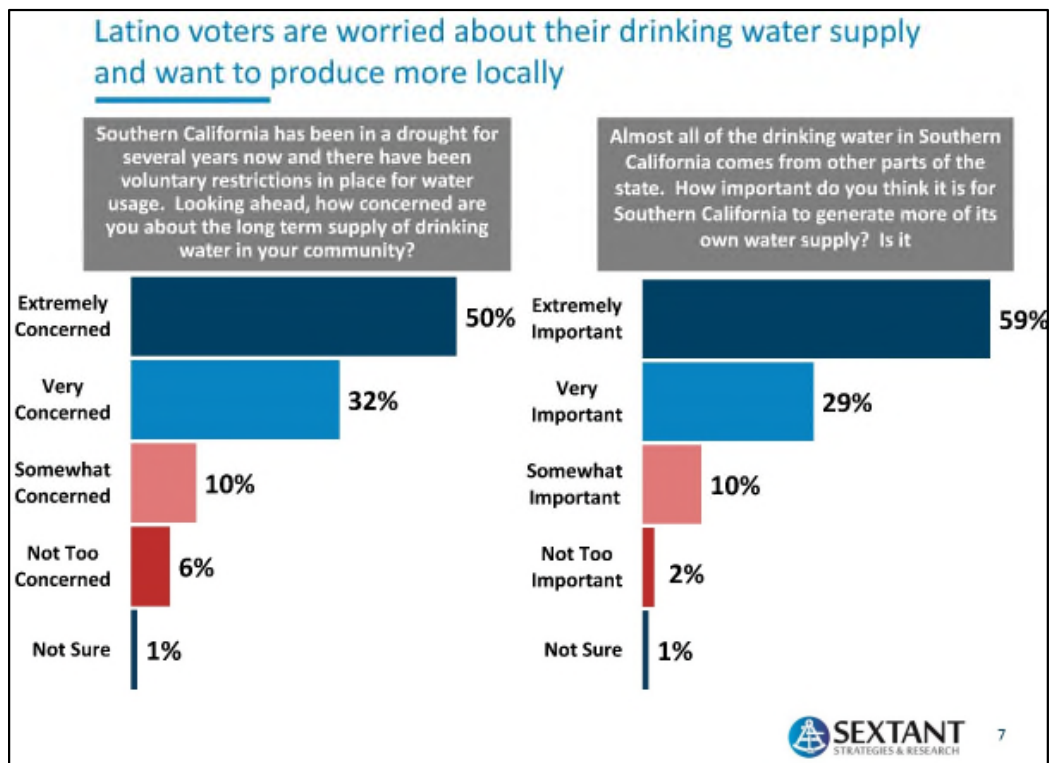
COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)

Baseline attitudes about the drought and drinking water supply

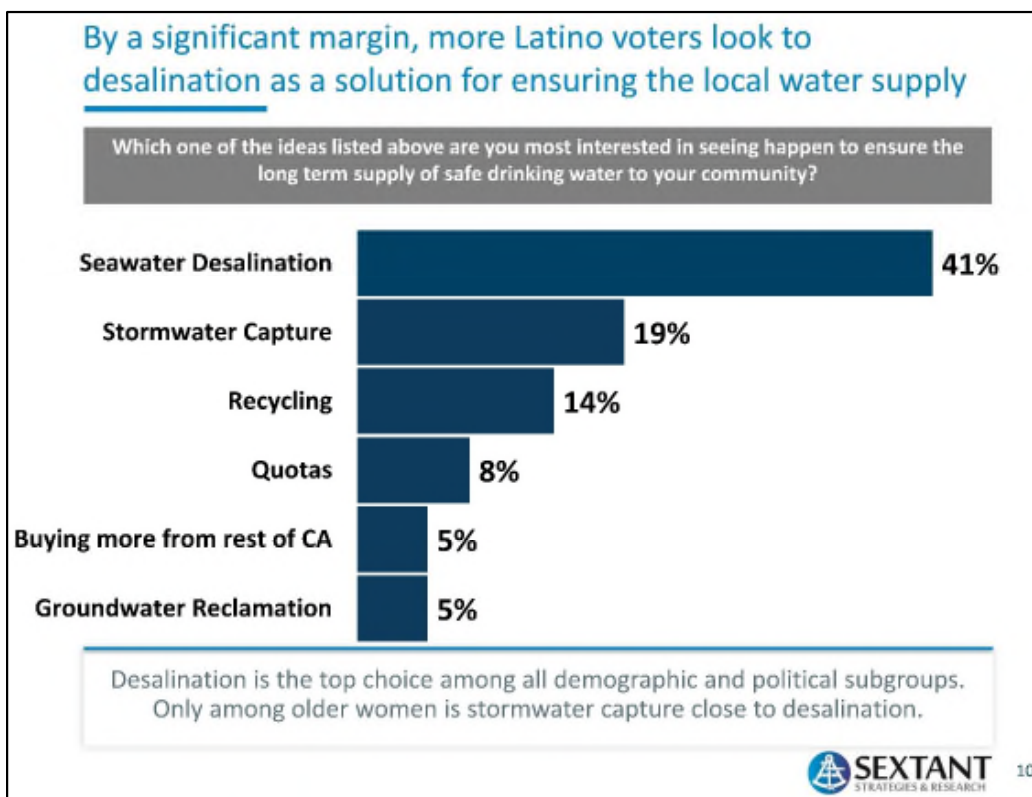
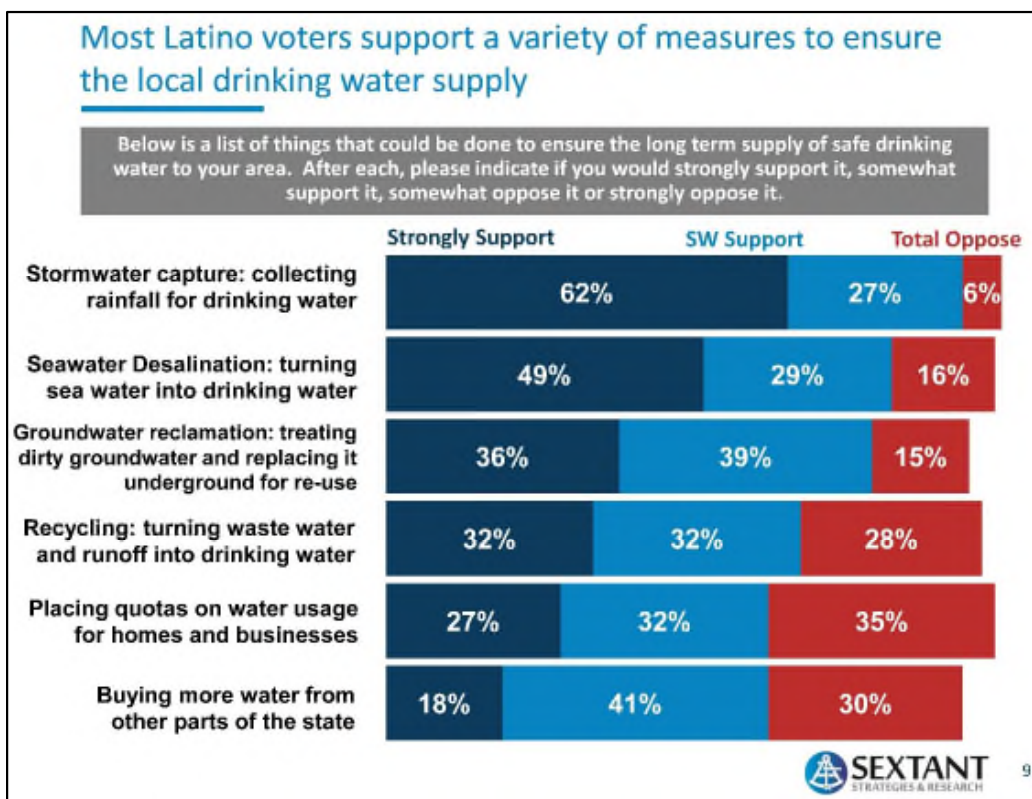

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COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)



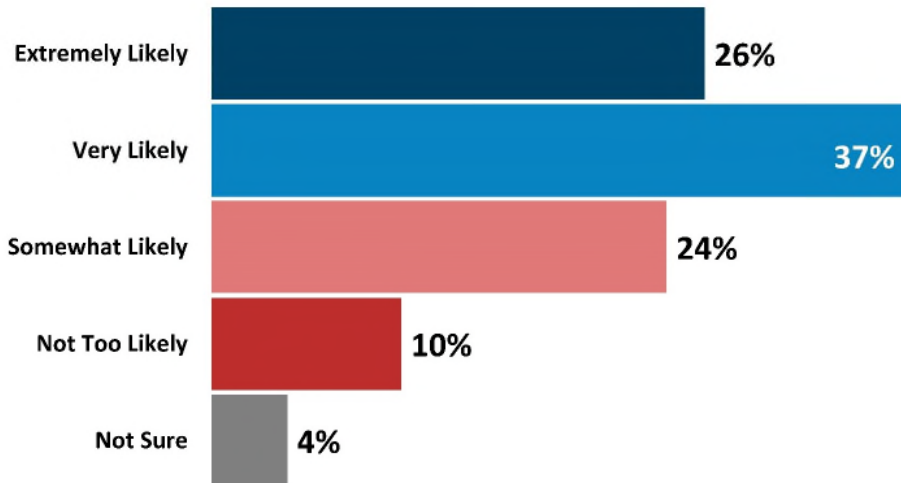
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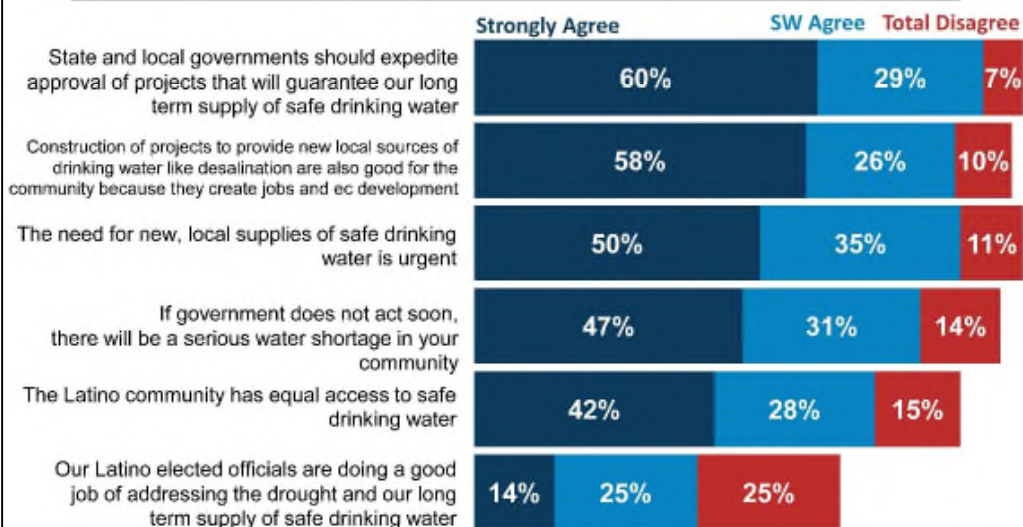
More than three-in-five Latino voters expect water quotas if no action is taken

How likely do you think it is that there will be mandatory quotas on water usage for homes and businesses if no measures are taken to increase the local supply of water? Is it

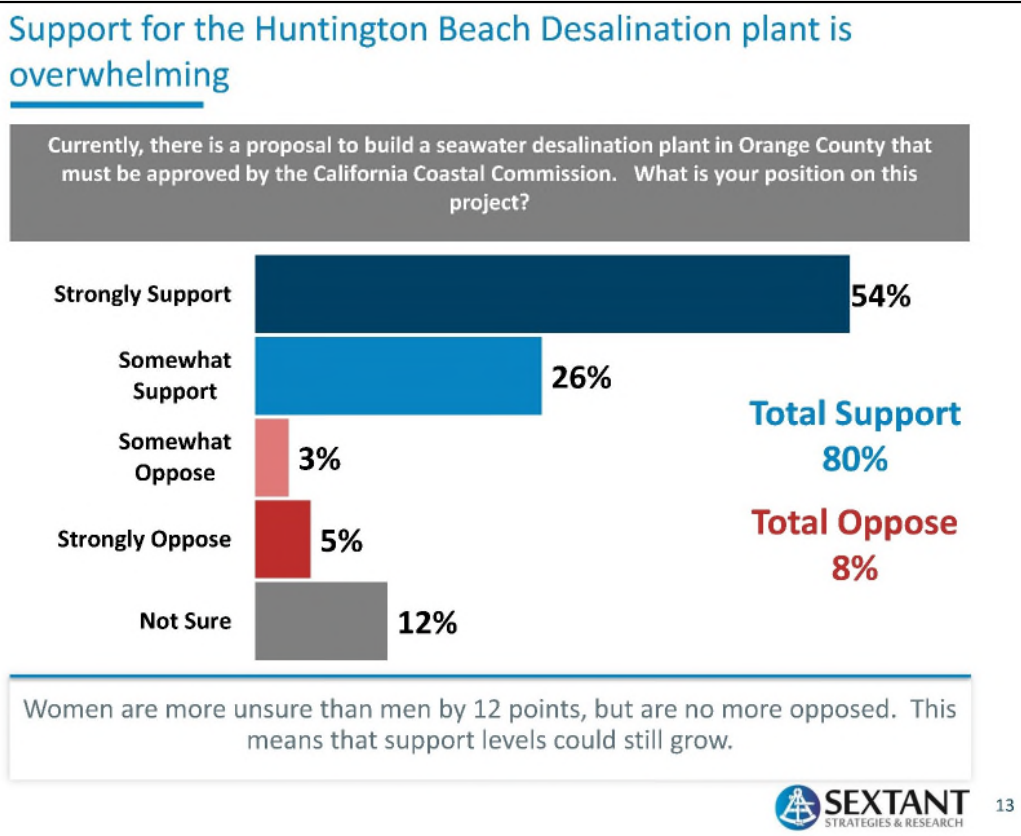


There is strong agreement regarding the urgency of acting now

Below are some statements about water issues. After each one, please indicate how strongly you agree or disagree with the statement.



COMMENT SET O32: WILLIAM C. VELASQUEZ INSTITUTE (cont.)



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Thank You

SEXTANT STRATEGIES & RESEARCH

WCVI

COMMENT SET O32: WILLIAM C. VELASQUES INSTITUTE (Public Meeting Transcript)

MS. DUMAN: Thank you. Good evening. I'm Michelle Duman, resident and president of the National Latino Business Women's Association of Orange County and president of the ULAC Orange County Foundation. I urge you to approve the Huntington Beach Desalination SEIR certification and land lease for the future of the OC Latinos and all OC residents. The William C. Velasquez Institute, which is one of the oldest Latino Civil Rights Organizations in the United States, is speaking in support of the proposed Huntington Beach Desalination plant. WCVI sees the Huntington Beach plant as a matter of environmental justice for the Latino communities. In 2016 WCVI watched as Pro Agua foundation's campaign, hosted a Latino summit on water policy and climate resiliency, which issued a resolution signed by 50 top Latino climate action leaders from across California to support the development of the Huntington Beach plant. As part of our Pro Agua work, the WCVI recently undertook a statewide water survey, which found the California voters across every demographic group and every region of the state overwhelmingly support seawater desalination. Nine out of ten, 90 percent,

O32-4

COMMENT SET O32: WILLIAM C. VELASQUES INSTITUTE (Public Meeting Transcript) (cont.)

avored desalination. A majority 56 percent strongly favored development of the seawater desalination in California.

This includes 90 percent of Latinos and 81 percent of African Americans. While we are aware of staff's conclusion that quote, No minority populations are identified that would be considered an environmental justice concern for activities associating with the lease modification project, unquote, we, nevertheless, want to point out that for our community ensuring a reliable source of drought proof local water is, indeed, an environmental justice issue, which Huntington Beach Desalination Project would address. The 50 million gallons a day of local drought proof water that Huntington Beach plant will produce has been identified by the Orange County Water District as the single largest source of new local water available to the district. Given climate change, Orange County's demand on imported water and growing population we believe it is essential that the DSEIR take into account as a matter of environmental justice the need to ensure this large local reliable source of new water for our community. Thank you very much for your time.

O32-4
cont.

RESPONSE TO COMMENT SET O32: WILLIAM C. VELASQUES INSTITUTE

- O32-1 The commenter's expression of support for the Project will be provided to the Commission for consideration in its decision-making process. The Project that will be considered by the Commission is the proposed Lease Modification Project, as defined in Section 2 of this Supplemental EIR. (See also master responses MR-1, *Scope of the Commission's Discretionary Action*, and MR-2, *Lease Modification Project Scope*.)
- O32-2 See Response to Comment O32-1.
- O32-3 See Response to Comment O32-1.
- O32-4 See Response to Comment O32-1.